

# EXHIBIT P

<p>1</p> <p>2 THE UNITED STATES DISTRICT COURT</p> <p>3 SOUTHERN DISTRICT OF NEW YORK</p> <p>4 MARJORIE PHILLIPS,-----X</p> <p>5 Plaintiff,</p> <p>6</p> <p>7 -against- Civil Action No.:</p> <p>8 17-cv-00221 (GBD)</p> <p>9</p> <p>10 THE FASHION INSTITUTE OF TECHNOLOGY, MARY</p> <p>11 DAVIS, and MARILYN BARTON,</p> <p>12 Defendants.-----X</p> <p>13 DATE: December 21, 2021</p> <p>14 TIME: 10:09 a.m.</p> <p>15</p> <p>16</p> <p>17 DEPOSITION</p> <p>18 of the Defendant, MARY E. DAVIS, Ph.D., s/h/a</p> <p>19 MARY DAVIS, by the Plaintiff, pursuant to a</p> <p>20 Notice, held via Video Conferencing, before</p> <p>21 Lesley Simpson, a Notary Public of the State</p> <p>22 of New York.</p> <p>23</p> <p>24</p> <p>25</p>	<p>3</p> <p>1</p> <p>2 A L S O P R E S E N T:</p> <p>3</p> <p>4 MARJORIE PHILLIPS, Plaintiff</p> <p>5 MARILYN BARTON, Defendant</p> <p>6 ANDRE THOMAS, Exhibit Manager</p> <p>7 PFP REPORTING</p> <p>8 * * *</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 THE COCHRAN FIRM, P.C.</p> <p>5 Attorneys for the Plaintiff</p> <p>6 One Exchange Place, 23rd Floor</p> <p>7 New York, New York 10006</p> <p>8 BY: DEREK S. SELLS, ESQ.</p> <p>9 MINA MALIK, ESQ.</p> <p>10 MONIQUE MILNER, ESQ.</p> <p>11</p> <p>12 NIXON PEABODY LLP</p> <p>13 Attorneys for the Defendant</p> <p>14 THE FASHION INSTITUTE OF TECHNOLOGY</p> <p>15 50 Jericho Quadrangle, Suite 300</p> <p>16 Jericho, New York 11753</p> <p>17 BY: NICHOLAS MELITO, ESQ.</p> <p>18 ROSE NANKERVIS, ESQ.</p> <p>19</p> <p>20</p> <p>21 SARETSKY KATZ &amp; DRANOFF LLP</p> <p>22 Attorneys for the Defendant</p> <p>23 MARY DAVIS</p> <p>24 475 Park Avenue South</p> <p>25 New York, New York 10016</p> <p>BY: ERIC DRANOFF, ESQ.</p> <p>BERANBAUM MENKEN LLP</p> <p>Attorneys for the Defendant</p> <p>MARILYN BARTON</p> <p>80 Pine Street, 33rd Floor</p> <p>New York, New York 10005</p> <p>BY: BRUCE MENKEN, ESQ.</p>	<p>4</p> <p>1</p> <p>2 F E D E R A L S T I P U L A T I O N S</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>5 between the counsel for the respective parties</p> <p>6 herein that the sealing, filing and</p> <p>7 certification of the within deposition be</p> <p>8 waived; that the original of the deposition</p> <p>9 may be signed and sworn to by the witness</p> <p>10 before anyone authorized to administer an</p> <p>11 oath, with the same effect as if signed before</p> <p>12 a Judge of the Court; that an unsigned copy of</p> <p>13 the deposition may be used with the same force</p> <p>14 and effect as if signed by the witness, 30</p> <p>15 days after service of the original &amp; 1 copy of</p> <p>16 same upon counsel for the witness.</p> <p>17</p> <p>18 IT IS FURTHER STIPULATED AND AGREED that</p> <p>19 all objections except as to form, are reserved</p> <p>20 to the time of trial.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>5</p> <p>1</p> <p>2 MARY E. DAVIS, Ph.D, having been</p> <p>3 first duly sworn before a Notary Public of the</p> <p>4 State of New York was sworn and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. SELLS:</p> <p>8 Q. Please, state your name and address</p> <p>9 for the record.</p> <p>10 A. Mary E. Davis. 82 Litchfield</p> <p>11 Turnpike, Bethany, Connecticut 06524.</p> <p>12 L-I-T-C-H-F-I-E-L-D.</p> <p>13 Q. Good morning, Dr. Davis.</p> <p>14 A. Good morning.</p> <p>15 Q. My name is Derek Sells. I represent</p> <p>16 Marjorie Phillips in a lawsuit against F.I.T.</p> <p>17 as well as yourself and Marilyn Barton. I</p> <p>18 will be asking you some questions today in</p> <p>19 connection with the lawsuit, some of the</p> <p>20 claims that have been made in the lawsuit.</p> <p>21 My first question to you is whether</p> <p>22 or not you will be able to understand</p> <p>23 questions that are asked of you today?</p> <p>24 A. I fully expect to.</p> <p>25 Q. So, you are not taking any medicine</p>	<p>7</p> <p>1 DAVIS, Ph.D.</p> <p>2 College in Notre Dame, Indiana in 1981 with a</p> <p>3 Bachelor's Degree in music; piano</p> <p>4 performance.</p> <p>5 Then I went onto the Peabody</p> <p>6 Conservatory in Baltimore where I earned a</p> <p>7 Master's Degree in piano performance. That</p> <p>8 would have been in 1983.</p> <p>9 And then I entered the workforce. I</p> <p>10 worked briefly as a paralegal in Washington</p> <p>11 D.C. for a firm called Jordan Coyne &amp; Savits.</p> <p>12 And that firm split up and I worked for one</p> <p>13 group of the partners who started a new firm</p> <p>14 called Jordan &amp; Lee. This is all in the</p> <p>15 1980s now.</p> <p>16 And I went from there to work for</p> <p>17 the President's Commission on Organized Crime</p> <p>18 where I wrote the report on drug trafficking</p> <p>19 and organized crime.</p> <p>20 And from there, I went to the</p> <p>21 Architectural and Barriers -- Architectural</p> <p>22 Transportation Barriers Compliance Board</p> <p>23 where I worked for a year as legislative</p> <p>24 aide.</p> <p>25 And then, I went to the law firm of</p>
<p>6</p> <p>1 DAVIS, Ph.D.</p> <p>2 or any other substance that will affect your</p> <p>3 ability to understand questions; is that</p> <p>4 correct?</p> <p>5 A. No, I am not.</p> <p>6 Q. If I ask a question you do not</p> <p>7 understand, please let me know so that I can</p> <p>8 rephrase it's or ask the question in a way</p> <p>9 that you do understand it. Is that fair?</p> <p>10 A. Fair enough.</p> <p>11 Q. If I ask you a question and you</p> <p>12 answer the question, I will assume that you</p> <p>13 understood my question and that you are just</p> <p>14 answering my question. Is that good?</p> <p>15 A. That's fine.</p> <p>16 Q. You are allowed to take a break</p> <p>17 almost at any time today, just let me know</p> <p>18 and we can take a break.</p> <p>19 I just ask if there is a pending</p> <p>20 question, that you answer the question before</p> <p>21 you take a break.</p> <p>22 A. Okay.</p> <p>23 Q. Can you give us a run down of your</p> <p>24 career?</p> <p>25 A. Sure. I graduated from St. Mary's</p>	<p>8</p> <p>1 DAVIS, Ph.D.</p> <p>2 Dewey Ballantine in DC where I worked for</p> <p>3 about five years as a legislative specialist.</p> <p>4 And then, I went back to school</p> <p>5 around 1990 and earned another Master's</p> <p>6 Degree in music history from the New England</p> <p>7 Conservatory in Boston and entered the Ph.D.</p> <p>8 program at Harvard on completion of that</p> <p>9 degree in 1992.</p> <p>10 So, I earned another Master's Degree</p> <p>11 at Harvard on the way to Ph.D., which I</p> <p>12 completed 1997; that was a Ph.D. in</p> <p>13 musicology.</p> <p>14 After that, I worked for one</p> <p>15 semester at the University of South Carolina</p> <p>16 as a sabbatical replacement faculty member</p> <p>17 and got a full-time tenure track faculty</p> <p>18 position at Case Western Reserve University</p> <p>19 in Cleveland, Ohio where I was a member of</p> <p>20 the faculty in the Music Department. I</p> <p>21 started as an assist professor and earned</p> <p>22 sequential promotions there to associate</p> <p>23 professor and then full professor. I was</p> <p>24 appointed the chair of the Department of</p> <p>25 Music. I also served as associate director</p>

<p style="text-align: right;">9</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the Baker North Center for Humanities for</p> <p>3 a number of years. And I was the university</p> <p>4 liaison to the Rock &amp; Roll Hall of Fame and</p> <p>5 Museum; that was 1998 to 2012 when I was</p> <p>6 recruited by F.I.T. to the job of dean of the</p> <p>7 Graduate School -- School of Graduate</p> <p>8 Studies.</p> <p>9 Q. Have you published any books or</p> <p>10 papers?</p> <p>11 A. I have. I have published four</p> <p>12 non-fiction books, scholarly books, and many</p> <p>13 book chapters, numerous essays in scholarly</p> <p>14 journals. I've also published some in --</p> <p>15 they're not specifically scholarly press,</p> <p>16 press for more general readership. I</p> <p>17 published online. I have given many</p> <p>18 conference presentations and participated in</p> <p>19 many scholarly dialogues over the years.</p> <p>20 Q. Now, have ever been accused of</p> <p>21 racist behavior?</p> <p>22 A. I don't know what you mean by</p> <p>23 "racist behavior."</p> <p>24 Q. What do you mean you don't know what</p> <p>25 I mean by racist behavior?</p>	<p style="text-align: right;">11</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, sir. I'm saying I don't</p> <p>3 understand what your terminology of "racist</p> <p>4 behavior" refers to. I don't understand what</p> <p>5 you mean by that.</p> <p>6 Q. So, you understand what "racist</p> <p>7 behavior" is, right?</p> <p>8 A. I do not have -- have a blanket</p> <p>9 understanding of what you are calling "racist</p> <p>10 behavior."</p> <p>11 Q. Okay. All right.</p> <p>12 MR. SELLS: Can we pull up</p> <p>13 Exhibit 32.</p> <p>14 (The image is shared on the</p> <p>15 computer screen.)</p> <p>16 Q. I'm showing you what's been</p> <p>17 previously marked as Exhibit 32, Plaintiff's</p> <p>18 Exhibit 32. This is a picture that was in</p> <p>19 the New York Post article of February 18 of</p> <p>20 2020. It's captioned, "F.I.T. apologizes for</p> <p>21 clearly racist alumni fashion show." Do you</p> <p>22 see that?</p> <p>23 A. I do.</p> <p>24 Q. Looking at that picture, do you</p> <p>25 believe that that is a clearly racist</p>
<p style="text-align: right;">10</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I'm trying to discern whether you</p> <p>3 are referring to the matter before us right</p> <p>4 now in which I am accused of various things</p> <p>5 related to race discrimination or whether</p> <p>6 there is something else that you are asking</p> <p>7 about. I don't understand.</p> <p>8 Q. The question was, Have you ever been</p> <p>9 accused of racist behavior? So, the answer</p> <p>10 is, yes, I have been or no, I haven't been.</p> <p>11 Then we can explore those.</p> <p>12 A. I would like to restate that I don't</p> <p>13 understand what you mean by "racist</p> <p>14 behavior."</p> <p>15 Q. When you say you don't know what I</p> <p>16 mean by "racist behavior," what do you</p> <p>17 understand the definition of "racist</p> <p>18 behavior" to mean?</p> <p>19 A. I don't have a standard definition</p> <p>20 for "racist behavior." I would understand</p> <p>21 individual situations based on the context</p> <p>22 and the content of the situations.</p> <p>23 Q. So as you sit here now, are you</p> <p>24 saying you do not know whether you have been</p> <p>25 accused of racist behavior before?</p>	<p style="text-align: right;">12</p> <p>1 DAVIS, Ph.D.</p> <p>2 photograph or does that depict a clearly</p> <p>3 racist image?</p> <p>4 A. I personally do not believe this is</p> <p>5 a racist image.</p> <p>6 Q. Okay. Why is that?</p> <p>7 A. It could be because I have a context</p> <p>8 for understanding that image.</p> <p>9 Q. You said you have a context as to</p> <p>10 why you believe the image is not racist?</p> <p>11 A. That's correct.</p> <p>12 Q. What is that context?</p> <p>13 A. I know the history of how this look</p> <p>14 came to be.</p> <p>15 Q. What is your history of how this</p> <p>16 look came to be?</p> <p>17 A. This is the work of one alumni</p> <p>18 fashion designer who by the time this</p> <p>19 photograph was taken was a professional</p> <p>20 designer. A young man named Jung Ki Wang who</p> <p>21 had been a student in the MFA fashion design</p> <p>22 program.</p> <p>23 As part of the curriculum in that</p> <p>24 program, students were required to develop a</p> <p>25 thesis idea over the course of two years.</p>

<p style="text-align: right;">13</p> <p>1 DAVIS, Ph.D.</p> <p>2 Jung Ki's thesis had to do with distortions</p> <p>3 and conceptions of beauty.</p> <p>4 As I understand it, having spoken to</p> <p>5 him, he broke a finger at some point in the</p> <p>6 first semester I believe of his F.I.T.</p> <p>7 education; and he became fascinated with the</p> <p>8 idea of what happens when one body part is</p> <p>9 distorted. And so his collection, which is</p> <p>10 documented in thesis material for all four</p> <p>11 semesters of his work, his thesis documents</p> <p>12 his explorations of that concept of beauty.</p> <p>13 And so, this look was an end result of that</p> <p>14 thesis work.</p> <p>15 However, the accessories, which are</p> <p>16 depicted here in this photograph, were</p> <p>17 selected by Jung Ki last minute prior to show</p> <p>18 because he did not have time to make the</p> <p>19 accessories that he intended to make to</p> <p>20 accompany his garments. The accessories that</p> <p>21 he intended to make based on his thesis</p> <p>22 materials -- which were displayed at F.I.T.</p> <p>23 in May, I believe, of 2019 -- the accessories</p> <p>24 were meant to be made of the same material as</p> <p>25 the garments. So, the accessories that he</p>	<p style="text-align: right;">15</p> <p>1 DAVIS, Ph.D.</p> <p>2 accessories. Mr. Wang asked for</p> <p>3 recommendations, for help in the days</p> <p>4 preceding the fashion show. He asked for</p> <p>5 assistance in identifying accessories that</p> <p>6 could perhaps fill the gaps between what he</p> <p>7 intended and nothing at all. And to my</p> <p>8 understanding, Mr. Farmer provided a list of</p> <p>9 options for him based on what he could find</p> <p>10 on Amazon, and these were the accessories</p> <p>11 that -- among the accessories, to my</p> <p>12 understanding, that were included in the list</p> <p>13 that Jung Ki selected from.</p> <p>14 MR. SELLS: We can take down the</p> <p>15 photograph.</p> <p>16 Q. Dr. Davis, you're saying that Kyle</p> <p>17 Farmer had no responsibility in the</p> <p>18 accessories that were used in the fashion</p> <p>19 show; is that correct?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form. You can answer.</p> <p>22 A. No, Mr. Sells, that is not correct.</p> <p>23 As I just stated, Mr. Farmer provided Mr. Wang,</p> <p>24 at Mr. Wang's request, with a list of options</p> <p>25 he pulled from Amazon that Mr. Wang could</p>
<p style="text-align: right;">14</p> <p>1 DAVIS, Ph.D.</p> <p>2 ended up using were not part of his original</p> <p>3 conception, but they were his choice.</p> <p>4 Q. That's why the big lips and the big</p> <p>5 ears are not racist to you; is that correct,</p> <p>6 Dr. Davis?</p> <p>7 A. That is correct. I certainly can</p> <p>8 understand that these would be offense to</p> <p>9 others.</p> <p>10 Q. Why? Why do you think it would be</p> <p>11 offensive to others?</p> <p>12 A. I can imagine that it could invoke</p> <p>13 racist tropes including tropes of minstrelsy</p> <p>14 that would be offensive to certain people.</p> <p>15 Q. Got it.</p> <p>16 You know and you left out of your</p> <p>17 answer that those accessories, the big lips</p> <p>18 and the big ears, came from Kyle Farmer,</p> <p>19 someone who is a direct report to you at the</p> <p>20 time, correct?</p> <p>21 A. No, Mr. Sells, that is not --</p> <p>22 Q. Oh, really --</p> <p>23 A. Yes -- that is not correct --</p> <p>24 Q. Okay. Okay --</p> <p>25 A. Mr. Farmer did not select those</p>	<p style="text-align: right;">16</p> <p>1 DAVIS, Ph.D.</p> <p>2 choose from, if he wanted to, to accessorize</p> <p>3 his designs for the show.</p> <p>4 Q. Well, that's not what you said in</p> <p>5 your lawsuit, right?</p> <p>6 A. No; that is exactly what I said in</p> <p>7 my lawsuit.</p> <p>8 Q. Oh, okay.</p> <p>9 MR. SELLS: Can we pull up</p> <p>10 Exhibit 59.</p> <p>11 (Whereupon, Plaintiff's Exhibit</p> <p>12 59, lawsuit between F.I.T. and Dr. Brown,</p> <p>13 was marked for identification as of</p> <p>14 this date.)</p> <p>15 (The image is shared on the</p> <p>16 computer screen.)</p> <p>17 Q. You recognize this; this is your</p> <p>18 lawsuit between F.I.T. and Dr. Brown, right?</p> <p>19 A. Yes.</p> <p>20 MR. SELLS: If we could go to</p> <p>21 last page of the exhibit.</p> <p>22 Q. You put a verification on this;</p> <p>23 isn't that right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">17</p> <p>1 DAVIS, Ph.D.</p> <p>2 And so, you swore that the contents</p> <p>3 of this document and the allegations therein</p> <p>4 were true; right? You swore to that, right?</p> <p>5 A. If you read the sentence it says,</p> <p>6 "The contents are true to my knowledge except</p> <p>7 as to matters therein stated to be alleged</p> <p>8 upon information and belief".</p> <p>9 Q. All right. Good.</p> <p>10 MR. SELLS: Could we now go to</p> <p>11 page 13 of the complaint, Paragraph</p> <p>12 42.</p> <p>13 (The image is shared on the</p> <p>14 computer screen.)</p> <p>15 Q. What you said in your complaint was</p> <p>16 that "following the Post article, both</p> <p>17 Professor Farmer and Mr. Thornn, at the</p> <p>18 behest of the administration, publicly took</p> <p>19 responsibility for the decisions that have</p> <p>20 been made with respect to the accessories."</p> <p>21 A. Yes, sir.</p> <p>22 Q. That's what you wrote?</p> <p>23 A. That's correct. These are --</p> <p>24 Q. Okay.</p> <p>25 So, Kyle Farmer and Richard Thornn</p>	<p style="text-align: right;">19</p> <p>1 DAVIS, Ph.D.</p> <p>2 behest of the administration Mr. Farmer took</p> <p>3 responsibility. It does not state that</p> <p>4 Mr. Farmer selected the accessories. There</p> <p>5 is a difference between those two things.</p> <p>6 Q. Okay.</p> <p>7 So you're saying that Mr. Farmer</p> <p>8 took responsibility only because F.I.T. asked</p> <p>9 him to take responsibility; is that correct?</p> <p>10 A. I cannot speak as to why Mr. Farmer</p> <p>11 did that. I believe he is on record about</p> <p>12 that in another matter.</p> <p>13 Q. Okay.</p> <p>14 So when you say at the behest, who</p> <p>15 asked him to take full responsibility or part</p> <p>16 responsibility along with Mr. Thornn for</p> <p>17 those accessories?</p> <p>18 A. I was in meetings where this was</p> <p>19 discussed with professor -- with Vice</p> <p>20 President Loreta Keane, dean for</p> <p>21 communication and external relations. But I</p> <p>22 was not privy to the full conversation.</p> <p>23 Q. So, you are saying that</p> <p>24 administrators at F.I.T. asked Mr. Farmer to</p> <p>25 lie and apologize for something he had no</p>
<p style="text-align: right;">18</p> <p>1 DAVIS, Ph.D.</p> <p>2 took responsibility for the decisions that had</p> <p>3 been made with respect to the accessories;</p> <p>4 that's what you wrote under oath in your</p> <p>5 complaint; is that correct?</p> <p>6 A. Yes, sir. What I wrote is --</p> <p>7 Q. No. No --</p> <p>8 A. No. No.</p> <p>9 Q. This is a "yes" or "no" question.</p> <p>10 Now --</p> <p>11 MR. SELLS: We could take down</p> <p>12 the document.</p> <p>13 Q. But here today you're saying that</p> <p>14 Mr. Farmer had no responsibility other than</p> <p>15 giving the links to the designer. But yet,</p> <p>16 they took, according to your complaint, they</p> <p>17 took responsibility, Mr. Farmer took</p> <p>18 responsibility for the decisions that had</p> <p>19 been made with respect to the accessories.</p> <p>20 So now you're changing it up, right?</p> <p>21 MR. DRANOFF: Object to the</p> <p>22 form. She is not changing it up.</p> <p>23 Objection to form.</p> <p>24 A. Mr. Sells, these are two separate</p> <p>25 things. My complaint states that at the</p>	<p style="text-align: right;">20</p> <p>1 DAVIS, Ph.D.</p> <p>2 responsibility for; is that right?</p> <p>3 A. No, sir.</p> <p>4 MR. MELITO: Objection to form.</p> <p>5 A. No, sir. Those are -- again, it is</p> <p>6 not an accurate representation. Kyle was</p> <p>7 asked, I believe, to take responsibility for</p> <p>8 the decisions and did so, as was Richard</p> <p>9 Thornn, the show producer. They issued these</p> <p>10 apologies publicly and that is a different</p> <p>11 matter from Kyle selecting the accessories.</p> <p>12 Kyle select -- Kyle did not select</p> <p>13 the accessories. He provided a list of the</p> <p>14 accessories from which Mr. Wang selected.</p> <p>15 That doesn't mean that Kyle was unable take</p> <p>16 responsibility for the decisions.</p> <p>17 Q. Got it.</p> <p>18 So how is it that you know that</p> <p>19 Mr. Farmer did not select the accessories;</p> <p>20 how do you know that?</p> <p>21 A. Because I was in meetings and</p> <p>22 discussions where he -- this was -- he</p> <p>23 explained this. And also where Jung Ki Wang</p> <p>24 attested to it.</p> <p>25 Q. And you know that they were telling</p>

<p style="text-align: right;">21</p> <p>1 DAVIS, Ph.D.</p> <p>2 the truth, of course, right?</p> <p>3 A. I -- I believe what was told to -- I</p> <p>4 believe the -- that it is the truth.</p> <p>5 Q. Oh, okay.</p> <p>6 And why do you believe it's the</p> <p>7 truth?</p> <p>8 A. In Jung Ki's case, because I know</p> <p>9 where he was aiming -- I know what the</p> <p>10 original designs were and I know that based</p> <p>11 on what he -- he reported after the fashion</p> <p>12 show that this was what happened. That he</p> <p>13 selected the accessories.</p> <p>14 Q. Because in your complaint, you</p> <p>15 allege that you had no knowledge of any</p> <p>16 decisions that were made with respect to the</p> <p>17 fashion show; isn't that what you say in your</p> <p>18 complaint?</p> <p>19 A. Yes, Mr. Sells. I did add in my</p> <p>20 complaint, but I said I had no knowledge</p> <p>21 about them prior to seeing them come down the</p> <p>22 runway. I had no advanced knowledge of the</p> <p>23 accessories that were selected --</p> <p>24 Q. Okay.</p> <p>25 So --</p>	<p style="text-align: right;">23</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Yes --</p> <p>3 A. -- as part of my jobs, yes. I have</p> <p>4 learned to read and understand many kinds of</p> <p>5 policies including those that you have</p> <p>6 referenced.</p> <p>7 Q. Got it.</p> <p>8 And in the various positions that</p> <p>9 you have occupied in your career, have you</p> <p>10 read antidiscrimination policies in a way so</p> <p>11 that you could understand what your role is</p> <p>12 in the event that an issue of discrimination</p> <p>13 is presented to you; have you done that?</p> <p>14 A. Yes, I believe I had.</p> <p>15 Q. Now, did you do that with regard to</p> <p>16 your career at F.I.T. when you became a dean?</p> <p>17 A. Yes.</p> <p>18 Q. And when did you become a dean?</p> <p>19 A. 2012.</p> <p>20 Q. Okay.</p> <p>21 MR. SELLS: Can we go to</p> <p>22 Plaintiff's Exhibit 3.</p> <p>23 (The image is shared on the</p> <p>24 computer screen.)</p> <p>25 Q. Do you recognize this, Dr. Davis?</p>
<p style="text-align: right;">22</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. As far as --</p> <p>3 Q. -- opinions about who selected the</p> <p>4 accessories, do you have personal knowledge</p> <p>5 of, right? You weren't present --</p> <p>6 A. I'm sorry?</p> <p>7 Q. You weren't present when those</p> <p>8 accessories were chosen?</p> <p>9 A. I was not present.</p> <p>10 Q. Okay.</p> <p>11 And you have chosen to believe your</p> <p>12 version of how those accessories got on the</p> <p>13 models lips and ears, right?</p> <p>14 A. No, sir. I'm not choosing to</p> <p>15 believe my version. I'm -- I'm reporting</p> <p>16 what was told to me in the weeks following</p> <p>17 the fashion show about the ways in which the</p> <p>18 accessories were selected.</p> <p>19 Q. Got it.</p> <p>20 Now, let me ask you something. In</p> <p>21 your career working for various companies and</p> <p>22 institutions, have you learned how to read</p> <p>23 and look at -- read and understand, I should</p> <p>24 say, antidiscrimination policies?</p> <p>25 A. In my career --</p>	<p style="text-align: right;">24</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, I do.</p> <p>3 Q. You understand that this is F.I.T.'s</p> <p>4 non-discrimination and antiharassment policy --</p> <p>5 A. Yes --</p> <p>6 Q. -- 2017?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What was your understanding of your</p> <p>9 responsibility as a dean if you received a</p> <p>10 complaint from an e-mail regarding racism?</p> <p>11 A. This policy speaks to</p> <p>12 non-discrimination and antiharassment; and I</p> <p>13 understood my responsibility in this to be to</p> <p>14 report incidents of non-discrimination and</p> <p>15 antiharassment as defined in the policy.</p> <p>16 Q. Report, when you say "report,"</p> <p>17 report to who?</p> <p>18 A. To the Title 9 officer. I believe</p> <p>19 there is -- I have not worked at F.I.T. for</p> <p>20 quite some time now. I believe there is a</p> <p>21 section to this that also addresses students.</p> <p>22 Q. What was your responsibility as the</p> <p>23 dean if a student reported an allegation of</p> <p>24 race discrimination?</p> <p>25 A. The practice of discrimination in --</p>

<p style="text-align: right;">25</p> <p>1 DAVIS, Ph.D.</p> <p>2 in regards to students just had another layer</p> <p>3 to it where I would report the incidents to</p> <p>4 my immediate supervisor, Giacomo Oliva.</p> <p>5 Q. Okay.</p> <p>6 And where did you get that from?</p> <p>7 A. That was a practice.</p> <p>8 Q. That was a practice; but it is not</p> <p>9 in this policy; is that correct?</p> <p>10 A. I believe that's correct.</p> <p>11 Q. What do you believe is correct?</p> <p>12 A. I believe that it was a practice</p> <p>13 that had been in place in the college before</p> <p>14 I joined, and that it is not written into the</p> <p>15 policy.</p> <p>16 Q. Okay.</p> <p>17 So, where did this practice come</p> <p>18 from?</p> <p>19 A. I don't know.</p> <p>20 MR. SELLS: If we could go to</p> <p>21 page 6 where it says "investigation</p> <p>22 and disciplinary procedures."</p> <p>23 Q. You see it says, "For purposes of</p> <p>24 this policy, the status of the Respondent</p> <p>25 will determine the applicable disciplinary</p>	<p style="text-align: right;">27</p> <p>1 DAVIS, Ph.D.</p> <p>2 dean, department director, department</p> <p>3 chairperson or coordinator or any other</p> <p>4 person with supervisory responsibility."</p> <p>5 Then it says, "Although such</p> <p>6 complaints need not be in writing, F.I.T.</p> <p>7 strongly encourages individuals to file a</p> <p>8 written complaint. Any person with</p> <p>9 supervisory responsibility who receives a</p> <p>10 complaint formally or informally in writing,</p> <p>11 orally or otherwise of discrimination,</p> <p>12 discriminatory harassment or retaliation,</p> <p>13 must report such information to the</p> <p>14 affirmative action officer immediately."</p> <p>15 Is that what the policy says?</p> <p>16 A. Yes; you just read it to me.</p> <p>17 Q. And was that your understanding of</p> <p>18 the policy back in 2017, 2018, 2019 and '20?</p> <p>19 A. Yes, that is the policy.</p> <p>20 Q. Got it.</p> <p>21 MR. SELLS: We can take down</p> <p>22 the document.</p> <p>23 Q. Did you understand as part of the</p> <p>24 antidiscrimination policy that when you as a</p> <p>25 supervisory official, as a dean in fact,</p>
<p style="text-align: right;">26</p> <p>1 DAVIS, Ph.D.</p> <p>2 procedures; for example, if the Respondent is</p> <p>3 a student, procedures used will be those</p> <p>4 delineated for students in this policy.</p> <p>5 If Respondent is an employee, the</p> <p>6 procedures used will be those delineated for</p> <p>7 employees in this policy."</p> <p>8 So, you see there's a distinction</p> <p>9 between complaints against students and</p> <p>10 complaints against employees. You understand</p> <p>11 that, right?</p> <p>12 A. Yes.</p> <p>13 Q. So, now let's get to the reporting</p> <p>14 complaints investigation procedure where a</p> <p>15 student is the Respondent.</p> <p>16 So, "Under the policy, any person</p> <p>17 who believes they may have been a victim of</p> <p>18 or believes they may have witnessed</p> <p>19 discrimination, discriminatory harassment or</p> <p>20 retaliation permitted by a student should</p> <p>21 report the incident to the Affirmative Action</p> <p>22 Office in the Office of Compliance and</p> <p>23 Audit." And then it gives the address.</p> <p>24 "Alternatively, such incidents may</p> <p>25 be reported to any senior administrator,</p>	<p style="text-align: right;">28</p> <p>1 DAVIS, Ph.D.</p> <p>2 received a complaint of discrimination that</p> <p>3 you were supposed to investigate it yourself?</p> <p>4 A. I'm sorry. Could you state that</p> <p>5 question again?</p> <p>6 MR. SELLS: Lesley, read back</p> <p>7 the question, please.</p> <p>8 (Whereupon, the requested</p> <p>9 portion of the transcript was read</p> <p>10 back.)</p> <p>11 A. No, I was not supposed to</p> <p>12 investigate it myself per the policy. I was</p> <p>13 supposed to report it.</p> <p>14 Q. And so, if you did undertake to</p> <p>15 investigate a complaint of discrimination</p> <p>16 yourself that would be in violation of the</p> <p>17 policy, right?</p> <p>18 A. I'm not understanding your question.</p> <p>19 I'm sorry. I'll tell you -- I'm not</p> <p>20 understanding the word "investigate."</p> <p>21 Q. What did you say?</p> <p>22 A. I'm not understanding what you mean</p> <p>23 by the word "investigate. "</p> <p>24 Q. "Investigate," okay.</p> <p>25 What about the word "investigate" do</p>



<p style="text-align: right;">29</p> <p>1 DAVIS, Ph.D.</p> <p>2 you not know?</p> <p>3 A. I'm --- I'm just not understanding</p> <p>4 what you mean by that word in this context.</p> <p>5 MR. SELLS: Can we put the</p> <p>6 policy backup again, please.</p> <p>7 Q. We just went through the report and</p> <p>8 complaints. Let's go to the next page, page</p> <p>9 7. Then it talks about "you must report such</p> <p>10 information to the affirmative action officer</p> <p>11 immediately."</p> <p>12 You saw that, right? We went</p> <p>13 through that.</p> <p>14 A. Yes.</p> <p>15 Q. Now, the next part of the equation</p> <p>16 talks about what? Can you just read that out</p> <p>17 loud for us?</p> <p>18 A. Yes. It's pre-investigation.</p> <p>19 Q. Pre-investigation, okay.</p> <p>20 So, I thought you said you</p> <p>21 understood what the policy was ---</p> <p>22 A. I --</p> <p>23 Q. --- did you understand or did you not</p> <p>24 understand, Dr. Davis?</p> <p>25 MR. DRANOFF: Object to the</p>	<p style="text-align: right;">31</p> <p>1 DAVIS, Ph.D.</p> <p>2 the word "immediately"?</p> <p>3 A. As --- as --- as it states</p> <p>4 "immediately."</p> <p>5 Q. I know; but what is your</p> <p>6 understanding of immediately? What does that</p> <p>7 mean to you as it relates to this policy?</p> <p>8 A. I -- I think it means immediately.</p> <p>9 Q. Okay.</p> <p>10 So, what is your definition of</p> <p>11 immediately?</p> <p>12 A. My definition of immediate is the</p> <p>13 definition of immediate, right away.</p> <p>14 Q. Right away, as soon as you get it,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 So now, the next thing is</p> <p>19 "pre-investigation." So the policy says that</p> <p>20 "once the affirmative action officer gets the</p> <p>21 complaint, the affirmative action officer</p> <p>22 will review the reported complaint and</p> <p>23 conduct an initial assessment to determine if</p> <p>24 the case falls within the scope of this</p> <p>25 policy and it's procedures."</p>
<p style="text-align: right;">30</p> <p>1 DAVIS, Ph.D.</p> <p>2 form.</p> <p>3 A. So again, it has been several years</p> <p>4 since I have been engaged with this policy.</p> <p>5 When I was on the job at F.I.T., I was very</p> <p>6 attuned to this policy and aware of it's</p> <p>7 provision.</p> <p>8 Q. All right. So you're saying it's</p> <p>9 been several years; is that what you just</p> <p>10 said? It's been several years since you</p> <p>11 understood this policy?</p> <p>12 A. I said it's been -- it's now been</p> <p>13 almost two years since I have worked at</p> <p>14 F.I.T.</p> <p>15 Q. Okay.</p> <p>16 A. And so I have not been engaged with</p> <p>17 this policy for that period of time as to</p> <p>18 it's specifics.</p> <p>19 Q. So when you say "several," you</p> <p>20 exaggerated?</p> <p>21 A. I'm sorry. It has been since</p> <p>22 February 2020.</p> <p>23 Q. So, the report is supposed to go to</p> <p>24 the affirmative action officer immediately.</p> <p>25 Now, what is your understanding of</p>	<p style="text-align: right;">32</p> <p>1 DAVIS, Ph.D.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. So under this policy, if you as dean</p> <p>5 receive a complaint of discrimination, then</p> <p>6 you're supposed to immediately inform the</p> <p>7 affirmative action officer who will then --</p> <p>8 the affirmative action officer will then do</p> <p>9 the assessment of whether or not that</p> <p>10 complaint is something that they will</p> <p>11 investigate --</p> <p>12 A. That is ---</p> <p>13 Q. --- is that right?</p> <p>14 A. That is correct, but it hinges on</p> <p>15 the definitions of the three topics that are</p> <p>16 covered here in the policy and which are</p> <p>17 defined in the policy which are</p> <p>18 discrimination, discriminatory harassment and</p> <p>19 retaliation.</p> <p>20 So in the role that I held at</p> <p>21 F.I.T., I was guided by the definitions in</p> <p>22 the policy in making the determination about</p> <p>23 whether a complaint in any of those areas had</p> <p>24 been lodged.</p> <p>25 Q. So, you took it upon yourself --</p>

<p style="text-align: right;">33</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No.</p> <p>3 Q. -- to decide whether or not if you</p> <p>4 heard something that might be discriminatory</p> <p>5 or might be harassment or might be</p> <p>6 retaliation, you took it upon yourself to</p> <p>7 investigate whether it actually fit one of</p> <p>8 those definitions before you would then pass</p> <p>9 on the complaint to the affirmative action</p> <p>10 officer; is that right?</p> <p>11 A. No, sir, that is not correct. I was</p> <p>12 guided in my decisionmaking regarding this</p> <p>13 policy by the terms of the policy which</p> <p>14 included definitions.</p> <p>15 Q. Okay.</p> <p>16 So you understood the policy to</p> <p>17 leave that assessment to the affirmative</p> <p>18 action officer, didn't you?</p> <p>19 A. No, sir. I understood that when a</p> <p>20 complaint of discrimination, discriminatory</p> <p>21 harassment or retaliation was lodged in</p> <p>22 compliance with the terms as outlined in the</p> <p>23 definitions included in this policy that I</p> <p>24 was then to refer it to the affirmative</p> <p>25 action officer who would then begin the</p>	<p style="text-align: right;">35</p> <p>1 DAVIS, Ph.D.</p> <p>2 used in the complaint.</p> <p>3 Q. Now, is that a complaint of a racial</p> <p>4 nature?</p> <p>5 A. That was a complaint that came in a</p> <p>6 broad context from students who wanted to</p> <p>7 discuss with me not -- not specifically the</p> <p>8 fashion show but the -- the larger scope of</p> <p>9 activities in the fashion design studio. So</p> <p>10 I -- that was -- that was the context for</p> <p>11 that comment.</p> <p>12 Q. Okay.</p> <p>13 So this came about after the fashion</p> <p>14 show, but before you got fired, right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right.</p> <p>17 And your reaction to the complaint</p> <p>18 was to do your own investigation, correct?</p> <p>19 A. No, that is not correct.</p> <p>20 Q. No? So, you didn't receive e-mails</p> <p>21 from three students or two students</p> <p>22 suggesting that there were issues with the</p> <p>23 show that were racist in nature?</p> <p>24 A. I received e-mails from the</p> <p>25 students, which as I recall voiced concern</p>
<p style="text-align: right;">34</p> <p>1 DAVIS, Ph.D.</p> <p>2 investigation.</p> <p>3 Q. Okay.</p> <p>4 You received complaints from</p> <p>5 students --</p> <p>6 MR. SELLS: We can take down</p> <p>7 the document.</p> <p>8 Q. You received complaints from</p> <p>9 students about the fashion show being</p> <p>10 discriminatory in nature; did you not?</p> <p>11 A. No, that is not correct.</p> <p>12 Q. No?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 Let's talk about that for minute.</p> <p>16 Because obviously in your complaint you talk</p> <p>17 about receiving complaints from students</p> <p>18 concerning the racial insensitivity of the</p> <p>19 fashion show; isn't that right?</p> <p>20 A. That is correct.</p> <p>21 MR. DRANOFF: Object to the</p> <p>22 form.</p> <p>23 What is the answer?</p> <p>24 THE WITNESS: That is correct.</p> <p>25 The phrase "racial insensitivity" was</p>	<p style="text-align: right;">36</p> <p>1 DAVIS, Ph.D.</p> <p>2 about the show and the fallout from the show.</p> <p>3 There were concerns about Mr. Wang.</p> <p>4 By the time the students reached out</p> <p>5 to me, social media had already erupted</p> <p>6 around the show and Mr. Wang was under</p> <p>7 tremendous pressure. At that point, the</p> <p>8 students were concerned about him. There</p> <p>9 were numerous issues that the students wished</p> <p>10 to discuss with me, and they asked for a</p> <p>11 meeting with me and with Mr. Farmer.</p> <p>12 Q. They asked for it, you said?</p> <p>13 A. They did.</p> <p>14 Q. Okay.</p> <p>15 So now when you say issues about</p> <p>16 Mr. Wang, these issues centered on him</p> <p>17 putting on a racist fashion design, correct?</p> <p>18 A. No, that is not correct.</p> <p>19 Q. Well, they weren't concerned that</p> <p>20 his reputation was now being that of a</p> <p>21 racist; that wasn't their concern? Is that</p> <p>22 right?</p> <p>23 A. They were concerned that he was</p> <p>24 being unfairly pillared in the press and at</p> <p>25 that point in social media.</p>

<p style="text-align: right;">37</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. As what?</p> <p>3 A. That he was fearful as somebody who</p> <p>4 was incentive to the possible perception of</p> <p>5 the accessories he used to compliment his</p> <p>6 looks as being cultural incentive.</p> <p>7 Q. Can you not say the word? That he</p> <p>8 was being unfairly -- if you believe it, that</p> <p>9 he was being unfairly criticized as a racist?</p> <p>10 A. I don't recall that -- the use of</p> <p>11 that word for a fact. It may be that that</p> <p>12 word was used; but I don't recall it.</p> <p>13 Q. So, does the word need to be used in</p> <p>14 order for you to feel as though someone is</p> <p>15 being described as a racist?</p> <p>16 A. I'm not sure I understand your</p> <p>17 question. Are you talking about in</p> <p>18 connection with Mr. Wang specifically?</p> <p>19 Q. Or yourself. Does someone need to</p> <p>20 say that you're a racist in order for you to</p> <p>21 understand that to be a complaint of racist</p> <p>22 behavior; does someone have to actually say,</p> <p>23 Dean Davis you're a racist in order for you</p> <p>24 to understand an allegation that you are a</p> <p>25 racist?</p>	<p style="text-align: right;">39</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 So when you got the complaint, the</p> <p>4 e-mail complaint from the students, you did</p> <p>5 not refer that to the affirmative action</p> <p>6 office, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. What you did is you met individually</p> <p>9 with those students that e-mailed you,</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And then again after you met with</p> <p>13 them, you still did not report that to the</p> <p>14 affirmative action officer, did you?</p> <p>15 A. That's correct.</p> <p>16 Q. No. Instead what you did was you</p> <p>17 called for the entire second year class, the</p> <p>18 cohort -- what is a "cohort" by the way?</p> <p>19 A. A "cohort" is a class of students.</p> <p>20 Q. Okay.</p> <p>21 You called for the cohort to meet</p> <p>22 with you and Mr. Farmer; isn't that right?</p> <p>23 A. That was at the students' request</p> <p>24 and after consultation with my immediate</p> <p>25 supervisor, VP Oliva.</p>
<p style="text-align: right;">38</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Well, that would certainly</p> <p>3 constitute an allegation that I was a racist.</p> <p>4 Q. But is that the only way that</p> <p>5 someone could refer to you as being a racist</p> <p>6 by actually calling you the word "racist"?</p> <p>7 A. No, there are other ways.</p> <p>8 Q. Right. It could be implied, right?</p> <p>9 A. I'm sorry. I didn't hear what you</p> <p>10 said.</p> <p>11 Q. It could be implied by a certain use</p> <p>12 of words, right?</p> <p>13 A. Certainly.</p> <p>14 Q. You could use the words cultural</p> <p>15 insensitive. That's another way of saying</p> <p>16 hey, someone's a racist, right?</p> <p>17 A. It can be.</p> <p>18 Q. Right. And so that's why F.I.T.'s</p> <p>19 policy is to leave it up to the affirmative</p> <p>20 action officer to make an initial assessment</p> <p>21 about whether an allegation itself</p> <p>22 constitutes a complaint of racial</p> <p>23 discrimination, retaliation or harassment,</p> <p>24 right.</p> <p>25 A. That is not my view of the policy.</p>	<p style="text-align: right;">40</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Really. Okay?</p> <p>3 MR. SELLS: Can we pull up</p> <p>4 Exhibit 64.</p> <p>5 (Counsel is sharing the</p> <p>6 computer screen image.)</p> <p>7 MR. SELLS: For the record,</p> <p>8 this is a document marked Exhibit C.</p> <p>9 Exhibit C to the motion to dismiss</p> <p>10 Mary Davis' lawsuit, and it -- if we</p> <p>11 could scroll up, I think, it's a</p> <p>12 three-page document.</p> <p>13 Q. Now, Dean Davis --</p> <p>14 A. Sir, I'm no longer a dean --</p> <p>15 Q. Okay.</p> <p>16 Ms. Davis, you wrote this memo,</p> <p>17 correct?</p> <p>18 A. I did.</p> <p>19 Q. And this was a memo to file dated</p> <p>20 18th of February 2020, correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Your meeting with MFA fashion design</p> <p>23 second year cohort; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. The cohort, you said, it was entire</p>

<p style="text-align: right;">41</p> <p>1 DAVIS, Ph.D.</p> <p>2 second year class; is that correct?</p> <p>3 A. We invited everyone from the second</p> <p>4 year. I don't -- I can't attest to the fact</p> <p>5 that everyone attended.</p> <p>6 Q. All right. I see.</p> <p>7 So you just said that you invited</p> <p>8 everyone to the cohort, right?</p> <p>9 A. Everyone in second year cohort was</p> <p>10 invited to this meeting.</p> <p>11 Q. Yes, but just a few seconds ago you</p> <p>12 said that the students asked for the meeting?</p> <p>13 A. They did.</p> <p>14 Q. They did. So let's read your memo.</p> <p>15 "This meeting was called following</p> <p>16 my individual meetings with Students AB --"</p> <p>17 it's blocked out -- and IR who are the</p> <p>18 second year cohort in the MFA fashion design</p> <p>19 program which took place on Wednesday,</p> <p>20 February 12th. During those meetings both</p> <p>21 students raised issues about the MFA fashion</p> <p>22 show, as well as more general concerns about</p> <p>23 their experience in the program. In</p> <p>24 particular, A noted that she had perceived a</p> <p>25 possible problem with the styling of Jung Ki</p>	<p style="text-align: right;">43</p> <p>1 DAVIS, Ph.D.</p> <p>2 So nowhere in your introduction of</p> <p>3 this second year cohort meeting did you say</p> <p>4 that the students asked for the meeting,</p> <p>5 correct?</p> <p>6 A. I did not include that in this</p> <p>7 summary, but that does not mean that did not</p> <p>8 happen. It did.</p> <p>9 Q. Got it.</p> <p>10 And even though a student perceived</p> <p>11 a possible problem with the styling of Wang's</p> <p>12 collection and warned the show producer that</p> <p>13 the models felt uncomfortable wearing the</p> <p>14 styling elements, you did not report this</p> <p>15 immediately to the affirmative action</p> <p>16 officer, did you?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay.</p> <p>19 Instead, what you did was you</p> <p>20 alerted Kyle Farmer who reported directly to</p> <p>21 you that there was an issue with regard to</p> <p>22 the accessories, correct?</p> <p>23 A. Not correct.</p> <p>24 Q. Okay.</p> <p>25 So when they say that -- when you</p>
<p style="text-align: right;">42</p> <p>1 DAVIS, Ph.D.</p> <p>2 Wang's collection, and had warned the show</p> <p>3 producer, Richard Thornn, and Kyle --" I take</p> <p>4 it that's Kyle Farmer?</p> <p>5 A. Correct.</p> <p>6 Q. -- that the models felt</p> <p>7 uncomfortable wearing the styling elements.</p> <p>8 She also indicated that Richard told</p> <p>9 her that she would never walk in my show</p> <p>10 after she had issued this warning. Most of</p> <p>11 the discussion with both students was focused</p> <p>12 more broadly on the culture in the MFA</p> <p>13 studio.</p> <p>14 After my discussion with them, I</p> <p>15 contacted Kyle and set a meeting with him to</p> <p>16 review the student concerns. This meeting</p> <p>17 took place on Thursday, February 13th.</p> <p>18 Following the meeting with Kyle, he and I</p> <p>19 called a meeting with the second year cohort</p> <p>20 for the morning of February 18th. This</p> <p>21 meeting took place from 10:30 a.m. to 12 p.m.</p> <p>22 in the MFA studio."</p> <p>23 Now, did I read that correctly?</p> <p>24 A. Yes, you did.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">44</p> <p>1 DAVIS, Ph.D.</p> <p>2 write that "the students perceived a possible</p> <p>3 problem with the styling of Wang's collection</p> <p>4 and warned the show producer," what were you</p> <p>5 talking about? What were they talking about?</p> <p>6 A. As I recall, one student that I</p> <p>7 reported here thought that the styling of</p> <p>8 Jung Ki's collection was offensive. She did</p> <p>9 not -- well, I'll just stop there.</p> <p>10 Q. And who was this student? What was</p> <p>11 his or her name?</p> <p>12 A. It's a -- it's a woman. Her name is</p> <p>13 AB, second year student in the fashion design</p> <p>14 program. She was also on a dean's fellow,</p> <p>15 which is a program that --</p> <p>16 Q. I just asked for her name.</p> <p>17 MR. MELITO: If we could mark</p> <p>18 that name confidential this part of</p> <p>19 the transcript is confidential it may</p> <p>20 implicate other statutes that schools</p> <p>21 have to follow.</p> <p>22 MR. SELLS: Yes, I don't have a</p> <p>23 problem with that.</p> <p>24 Q. Now, you said that a student said</p> <p>25 that she felt that Wang's selection and the</p>

<p style="text-align: right;">45</p> <p>1 DAVIS, Ph.D.</p> <p>2 styling elements were offensive; is that</p> <p>3 correct?</p> <p>4 A. I don't recall her exact words.</p> <p>5 Q. Well, you just said that they were</p> <p>6 offense --</p> <p>7 A. I know. I -- my recollection is</p> <p>8 that she was concerned, as I wrote here -- I</p> <p>9 think -- I think it is best to stick with</p> <p>10 what I wrote here, that she perceived a</p> <p>11 possible problem with the styling of Jung</p> <p>12 Ki's collection.</p> <p>13 Q. That's what she said. I think there</p> <p>14 was a possible problem, so I better go warn</p> <p>15 the producer that there's a possible problem.</p> <p>16 Is that what she said to you?</p> <p>17 A. I can't say for sure. I can tell</p> <p>18 you what I wrote in this memo.</p> <p>19 Q. Got it.</p> <p>20 Did you take notes of your</p> <p>21 conversation?</p> <p>22 A. I think --</p> <p>23 Q. -- with the student?</p> <p>24 A. I believe these are my notes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">47</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. All right.</p> <p>4 But what you wrote is, "In</p> <p>5 particular, A noted that she had perceived a</p> <p>6 possible problem with the styling of Jung Ki</p> <p>7 Wang's collection and had warned the show</p> <p>8 producer, Richard Thornn, and Kyle that the</p> <p>9 models felt uncomfortable wearing the styling</p> <p>10 elements."</p> <p>11 Now, what about the models feeling</p> <p>12 uncomfortable wearing them; what was your</p> <p>13 understanding of the nature of this</p> <p>14 complaint?</p> <p>15 A. First of all, I would like to point</p> <p>16 out that the models were professional models</p> <p>17 who were engaged by the producer. They were</p> <p>18 not students or in any way related to F.I.T.</p> <p>19 So my responsibility regarding</p> <p>20 models was -- it did not really exist. As</p> <p>21 far as what the student said about the models</p> <p>22 feeling uncomfortable wearing the styling</p> <p>23 elements, I recall that there were issues of</p> <p>24 literally feeling uncomfortable particularly</p> <p>25 with the lips because those were designed to</p>
<p style="text-align: right;">46</p> <p>1 DAVIS, Ph.D.</p> <p>2 Well, you met with her on February</p> <p>3 12th, did you not?</p> <p>4 A. I did.</p> <p>5 Q. Okay.</p> <p>6 So this memo was written on February</p> <p>7 18th, right?</p> <p>8 A. That's correct.</p> <p>9 Q. So, you didn't take contemporaneous</p> <p>10 notes of your conversation with the student?</p> <p>11 A. I can't say.</p> <p>12 Q. Was it your practice back then to</p> <p>13 take notes?</p> <p>14 A. It depended on the situation; but I</p> <p>15 took a fair amount of notes. I don't know</p> <p>16 whether I have notes.</p> <p>17 Q. Got it.</p> <p>18 So a student tells you, look, it was</p> <p>19 offensive what I had seen, but you didn't</p> <p>20 bring that to the attention of the</p> <p>21 affirmative action officer, correct, on</p> <p>22 February 12th, right?</p> <p>23 A. I -- I did not.</p> <p>24 Q. Got it.</p> <p>25 What did the other student say you?</p>	<p style="text-align: right;">48</p> <p>1 DAVIS, Ph.D.</p> <p>2 stretch the mouth; and one of the models, as</p> <p>3 I recall, said that that was not comfortable</p> <p>4 for her. I don't -- I can't attest to what</p> <p>5 else that means in this context.</p> <p>6 Q. Got it.</p> <p>7 So according to you, when you wrote</p> <p>8 that the models felt uncomfortable wearing</p> <p>9 the styling element, it had nothing to do</p> <p>10 with the big lips and the big ears. It had</p> <p>11 to do with the fact that they literally felt</p> <p>12 uncomfortable because it was painful for them</p> <p>13 to put these accessories on; is that your</p> <p>14 understanding of it, Dean Davis?</p> <p>15 A. That is not --</p> <p>16 Q. I mean -- sorry, Dr. Davis.</p> <p>17 A. That is not my complete</p> <p>18 understanding. I'm just pointing out that I</p> <p>19 do recall that the word related to actual</p> <p>20 physical discomfort as well. I think it's</p> <p>21 worth keeping in mind that the styling</p> <p>22 elements here are not simply ears and the</p> <p>23 exaggerated lips, but they also included long</p> <p>24 gloves -- again, designed to emphasize a</p> <p>25 distortion of body parts -- and eyebrows,</p>

<p style="text-align: right;">49</p> <p>1 DAVIS, Ph.D.</p> <p>2 oversized eyebrows.</p> <p>3 So, the characterization of all of</p> <p>4 the accessories as possibly invoking racist</p> <p>5 tropes or being offensive in ways that relate</p> <p>6 to racism is a sort of oversimplification of</p> <p>7 what was really going on with the design.</p> <p>8 Q. Got it.</p> <p>9 So, you're twisting it. Your</p> <p>10 twisting it to fit --</p> <p>11 MR. DRANOFF: Objection.</p> <p>12 Q. You're twisting it to fit your</p> <p>13 narrative --</p> <p>14 MR. DRANOFF: Object to the</p> <p>15 form.</p> <p>16 Q. Is that what you are trying to do?</p> <p>17 A. No, sir. No, sir.</p> <p>18 MR. DRANOFF: Just like you</p> <p>19 are, Derek.</p> <p>20 A. No, sir. I'm not twisting anything.</p> <p>21 I'm simply trying to answer your question.</p> <p>22 Q. Got it.</p> <p>23 And that is why you didn't present</p> <p>24 it to the affirmative action officer</p> <p>25 immediately, right?</p>	<p style="text-align: right;">51</p> <p>1 DAVIS, Ph.D.</p> <p>2 But he was also intimately</p> <p>3 associated with the selection of the</p> <p>4 accessories used by Mr. Wang, correct?</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form.</p> <p>7 A. No.</p> <p>8 Q. No, okay.</p> <p>9 So, "I contacted Kyle and set a</p> <p>10 meeting with him to review the student</p> <p>11 concerns."</p> <p>12 And "student concerns," just so I'm</p> <p>13 clear, had to do with Wang's collection and</p> <p>14 the warning -- and the warning that the</p> <p>15 student had given to Mr. Thornn and Mr. Farmer,</p> <p>16 correct?</p> <p>17 A. No, sir. If you return to the first</p> <p>18 paragraph, the sentence that begin, "most of</p> <p>19 the discussions with both students was</p> <p>20 focused more broadly on the culture in the</p> <p>21 MFA studio"; that was the crux of the</p> <p>22 discussion that they wanted to have.</p> <p>23 Q. And what about the culture?</p> <p>24 A. Pardon me?</p> <p>25 Q. What about culture?</p>
<p style="text-align: right;">50</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, that is not correct. I did not</p> <p>3 present it to the affirmative action officer</p> <p>4 immediately because, per the policy and its</p> <p>5 definitions, I did not consider anything that</p> <p>6 had happened to meet the definition terms</p> <p>7 that invoked the need to report to the</p> <p>8 affirmative action officer.</p> <p>9 Q. Okay. Let's keep going.</p> <p>10 "After my discussions with them, I</p> <p>11 contacted Kyle."</p> <p>12 So, you don't reach out to the</p> <p>13 affirmative action officer; but you reach out</p> <p>14 to Mr. Farmer --</p> <p>15 A. That's correct --</p> <p>16 Q. -- someone you supervise and someone</p> <p>17 who was intimately associated with the</p> <p>18 accessories that were used with Mr. Wang's</p> <p>19 collection, correct?</p> <p>20 A. Kyle was included in this meeting</p> <p>21 because he was the chair of the Fashion</p> <p>22 Design Department. This was his program and</p> <p>23 the concerns were coming from students in the</p> <p>24 program.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">52</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. There were concerns from the</p> <p>3 students that the culture was not positive</p> <p>4 for them. There were some students who I</p> <p>5 learned that day felt that there was a</p> <p>6 culture of overly -- sort of an overly</p> <p>7 critical culture in the studio and that there</p> <p>8 was a sort of harshness to the way in which</p> <p>9 they were treated and -- and that was --</p> <p>10 those were general -- general perceptions.</p> <p>11 Q. So, there was never a discussion</p> <p>12 about the program being bigoted and racist?</p> <p>13 A. The program itself being bigoted and</p> <p>14 racist?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. Oh, okay.</p> <p>18 MR. DRANOFF: Derek, before</p> <p>19 your next question can we just take</p> <p>20 five minutes?</p> <p>21 MR. SELLS: Yes, that's fine.</p> <p>22 (Whereupon, at 11:13 a.m. a brief</p> <p>23 recess was taken; after which, the</p> <p>24 proceeding continued at 11:21 a.m. as</p> <p>25 follows.)</p>

<p style="text-align: right;">53</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, Dr. Davis, just to be clear you</p> <p>3 have sat through most of the depositions in</p> <p>4 the case, correct?</p> <p>5 A. I have sat through, I believe, four</p> <p>6 depositions -- three depositions in this</p> <p>7 case.</p> <p>8 Q. Got it.</p> <p>9 So you understand, as you sit here</p> <p>10 today, that one of the allegations that's</p> <p>11 been made about you with regard to my client,</p> <p>12 Marjorie Phillips, is that when she went to</p> <p>13 you with a complaint of race discrimination</p> <p>14 or even multiple complaints of race</p> <p>15 discrimination you did not report it to the</p> <p>16 affirmative action office, right, you</p> <p>17 understand that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Okay.</p> <p>20 So when I was talking to you earlier</p> <p>21 today and asking you questions earlier today</p> <p>22 about the different narratives between your</p> <p>23 lawsuit where you're trying to get money</p> <p>24 damages and defending against Ms. Phillips'</p> <p>25 complaints where you might have to pay money</p>	<p style="text-align: right;">55</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, the requested</p> <p>3 portion of the transcript was read</p> <p>4 back.)</p> <p>5 Q. Did you hear your answers?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay.</p> <p>8 So now you indicated that you didn't</p> <p>9 know whether your meeting with the students</p> <p>10 implicated the policy that required you to</p> <p>11 report the complaints to the affirmative</p> <p>12 action officer; is that right?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 A. I -- based on the definitions</p> <p>16 included in the policy, I did not believe</p> <p>17 that it -- it triggered my responsibility to</p> <p>18 report to the affirmative action officer.</p> <p>19 Q. Got it.</p> <p>20 And that is what you're saying</p> <p>21 today, right?</p> <p>22 A. Are you asking me do I believe that</p> <p>23 today?</p> <p>24 Q. Yes.</p> <p>25 A. I don't believe that the -- yes, I --</p>
<p style="text-align: right;">54</p> <p>1 DAVIS, Ph.D.</p> <p>2 damages, you're trying to walk a very fine</p> <p>3 line; isn't that correct?</p> <p>4 A. No, that is a mischaracterization I</p> <p>5 believe and is incorrect.</p> <p>6 Q. Got it --</p> <p>7 A. -- I'm hear to tell you --</p> <p>8 Q. Well --</p> <p>9 A. -- I'm here to tell you the truth.</p> <p>10 Q. Got it.</p> <p>11 So when you say you're here to tell</p> <p>12 me the truth, one of the things you just said</p> <p>13 was that when you met with these students</p> <p>14 that you didn't know whether they were</p> <p>15 complaining about the accessories as being</p> <p>16 uncomfortable or being racist in nature;</p> <p>17 isn't that what you said?</p> <p>18 A. No, I don't believe that's what I</p> <p>19 said.</p> <p>20 Q. What did you say?</p> <p>21 A. I said -- I believe that I said --</p> <p>22 actually the court reporter can read back</p> <p>23 what I said.</p> <p>24 MR. SELL: Okay. If we could</p> <p>25 just read back.</p>	<p style="text-align: right;">56</p> <p>1 DAVIS, Ph.D.</p> <p>2 I -- I am saying that today. I don't believe</p> <p>3 that --</p> <p>4 Q. So, you didn't --</p> <p>5 A. I --</p> <p>6 Q. -- just to be clear, you did not</p> <p>7 understand the students who you spoke to as</p> <p>8 raising issues of racial -- of a racial</p> <p>9 nature; is that right?</p> <p>10 A. The policy speaks specifically and</p> <p>11 defines specifically discrimination,</p> <p>12 discriminatory harassment and retaliation. I</p> <p>13 worked from the policy and it's definitions</p> <p>14 of those three categories.</p> <p>15 Q. Got it.</p> <p>16 And so the depiction of a person</p> <p>17 with big lips and the big ears and a</p> <p>18 student's belief that that's racially</p> <p>19 incentive and that they were offended in your</p> <p>20 view does not trigger the policy; is that</p> <p>21 correct?</p> <p>22 A. It did not -- it -- it did not</p> <p>23 correlate to the definitions included in the</p> <p>24 policy in a way that would have triggered the</p> <p>25 need to report to the affirmative action</p>



<p style="text-align: right;">57</p> <p>1 DAVIS, Ph.D.</p> <p>2 officer; that is correct.</p> <p>3 Q. And that is your own reading of it;</p> <p>4 is that correct?</p> <p>5 A. The policy is clear. It is --</p> <p>6 Q. That is your definition? That is</p> <p>7 your definition --</p> <p>8 A. No, sir, it is not my definition --</p> <p>9 Q. Okay --</p> <p>10 A. -- it is my reading of the policy.</p> <p>11 Q. Got it.</p> <p>12 In your complaint --</p> <p>13 MR. SELLS: If we could put up</p> <p>14 Exhibit 59 again.</p> <p>15 (The image is shared on the</p> <p>16 computer screen.)</p> <p>17 MR. SELLS: If we could go to</p> <p>18 Paragraph 32. We'll start at 32.</p> <p>19 Q. Now, in your own lawsuit where you</p> <p>20 are seeking money damages -- by the way, how</p> <p>21 much money are you seeking --</p> <p>22 A. This is a defamation lawsuit, and it</p> <p>23 is -- I'm seeking 10 million dollars in</p> <p>24 damages.</p> <p>25 Q. 10 million?</p>	<p style="text-align: right;">59</p> <p>1 DAVIS, Ph.D.</p> <p>2 second year students in the fashion design</p> <p>3 MFA program e-mailed her. Dr. Davis promptly</p> <p>4 responded to the students, meeting with both</p> <p>5 of them the following day."</p> <p>6 That's what you sworn to --</p> <p>7 A. That's correct and consistent with</p> <p>8 my memo.</p> <p>9 Q. All right.</p> <p>10 So, I'm going to call for the</p> <p>11 production of the e-mails that you referenced</p> <p>12 in Paragraph 32. Do you still have those</p> <p>13 e-mails?</p> <p>14 A. I no longer have access to my F.I.T.</p> <p>15 e-mail.</p> <p>16 MR. SELLS: All right. So, I</p> <p>17 direct this request to F.I.T. Can</p> <p>18 you, please, provide us with those</p> <p>19 e-mails.</p> <p>20 MR. MELITO: Again, just follow</p> <p>21 up in writing, Derek.</p> <p>22</p> <p>23 MR. SELLS: Okay.</p> <p>24 Q. And then 33, the next paragraph you</p> <p>25 write, "Immediately after meeting with the</p>
<p style="text-align: right;">58</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes.</p> <p>3 Q. Why are you seeking 10 million</p> <p>4 dollars? What was it about F.I.T.'s actions</p> <p>5 and President Brown's actions that you feel</p> <p>6 defamed you?</p> <p>7 A. It's explained in the pages of the</p> <p>8 suit.</p> <p>9 Q. No, I am asking you.</p> <p>10 A. I'm telling you. It is explained</p> <p>11 thoroughly in the legal document.</p> <p>12 Q. Okay.</p> <p>13 But I am asking you --</p> <p>14 A. I'm not going to summarize for you</p> <p>15 beyond saying that this is a defamation suit</p> <p>16 against F.I.T. and President Brown in her</p> <p>17 capacity for -- for defaming.</p> <p>18 Q. In what way were you defamed?</p> <p>19 A. Every point -- every point in the</p> <p>20 legal papers speaks to that.</p> <p>21 Q. Got it. All right. So, let's look</p> <p>22 at Paragraph 32.</p> <p>23 "On or about February 11th,</p> <p>24 Dr. Davis was first alerted to student</p> <p>25 concerns about the fashion show when two</p>	<p style="text-align: right;">60</p> <p>1 DAVIS, Ph.D.</p> <p>2 students, recognizing the importance and time</p> <p>3 sensitivity of their concerns, Dr. Davis</p> <p>4 e-mailed her supervisor, VP Oliva. She</p> <p>5 alerted him that some students had expressed</p> <p>6 concerns that the use of certain accessories</p> <p>7 at the fashion show raised issues about</p> <p>8 F.I.T.'s lack of racial sensitivity."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Okay.</p> <p>12 And so, it's clear from your</p> <p>13 complaint that you knew that this was an</p> <p>14 important and sensitive issue, right?</p> <p>15 A. That's correct.</p> <p>16 Q. And you knew that because the</p> <p>17 students themselves said that the use of</p> <p>18 those accessories reflected on F.I.T.'s --</p> <p>19 F.I.T.'s lack of racial sensitivity, correct?</p> <p>20 A. I wrote that the students had</p> <p>21 expressed concerns that the use of certain</p> <p>22 accessories raised issues about F.I.T.'s lack</p> <p>23 of racial sensitivity --</p> <p>24 Q. Okay.</p> <p>25 So it's not about the fashion show,</p>



<p style="text-align: right;">61</p> <p>1 DAVIS, Ph.D.</p> <p>2 it's about how the use of the accessories at</p> <p>3 the fashion show raised issues about F.I.T.'s</p> <p>4 lack of racial sensitivity, right; the</p> <p>5 school's lack of racial sensitivity, that was</p> <p>6 what the complaint was, correct?</p> <p>7 A. The complaint was --</p> <p>8 MR. DRANOFF: Hold on there.</p> <p>9 I just want to object to the</p> <p>10 form, Derek.</p> <p>11 Go ahead.</p> <p>12 A. Let me put it this way. The</p> <p>13 concerns --</p> <p>14 Q. You already put it. It's already in</p> <p>15 the question. You wrote and you swore to it</p> <p>16 that you alerted VP Oliva that some students</p> <p>17 had expressed concerns that the use of</p> <p>18 certain accessories at the fashion show</p> <p>19 raised issues about F.I.T.'s lack of racial</p> <p>20 sensitivity, right, F.I.T.'s lack of racial</p> <p>21 sensitivity, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. That's what you wrote --</p> <p>24 A. That's correct.</p> <p>25 Q. And so, when you talk about a</p>	<p style="text-align: right;">63</p> <p>1 DAVIS, Ph.D.</p> <p>2 action officer?</p> <p>3 A. I return to the policy and it's</p> <p>4 categories of discrimination, discriminate</p> <p>5 harassment and retaliation. A lack of racial</p> <p>6 sensitivity in the definitional section of</p> <p>7 that policy, I don't consider it to -- I</p> <p>8 considered this sentence to be a broad</p> <p>9 representation in contrast to the specifics</p> <p>10 that are included in the policy.</p> <p>11 Q. Got it.</p> <p>12 So this is no big deal --</p> <p>13 A. No --</p> <p>14 Q. Wait. Wait. This is no big deal,</p> <p>15 you know, et cetera. Just a lack of racial</p> <p>16 sensitivity. Okay. We could all live with</p> <p>17 that. We don't need to have an investigation</p> <p>18 by the Affirmative Action Office. Even</p> <p>19 though it involves my own direct report, it</p> <p>20 is not problem --</p> <p>21 A. Mr. Sells --</p> <p>22 Q. -- is that what you are saying?</p> <p>23 A. No, that is a gross</p> <p>24 mischaracterization of what I --</p> <p>25 Q. Gross --</p>
<p style="text-align: right;">62</p> <p>1 DAVIS, Ph.D.</p> <p>2 complaint about the school's lack of racial</p> <p>3 sensitivity, that is something that directly</p> <p>4 impacts the policy and should directly go to</p> <p>5 the affirmative action officer, correct?</p> <p>6 A. I believe that's your opinion. I</p> <p>7 don't believe that it's correct. I think</p> <p>8 that --</p> <p>9 Q. When you talk about F.I.T.'s "lack</p> <p>10 of racial sensitivity," your school's, your</p> <p>11 employer's lack of racial sensitivity, which</p> <p>12 is a complaint about racial discrimination at</p> <p>13 the school, correct?</p> <p>14 A. Um. Mr. Sells, I would refer you,</p> <p>15 once, again to the definitional section --</p> <p>16 Q. You don't have to refer me to</p> <p>17 anything. I just want you to answer the</p> <p>18 question.</p> <p>19 A. I am answering the question.</p> <p>20 Q. Okay.</p> <p>21 So if someone complains to you and</p> <p>22 says, "You know, Dean Davis, I think the</p> <p>23 school lacks racial sensitivity;" you're</p> <p>24 saying that wouldn't invoke the policy that</p> <p>25 requires you to report it to the affirmative</p>	<p style="text-align: right;">64</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. -- am saying and what I have</p> <p>3 written. It is the fact that I am alerting</p> <p>4 my supervisor, the vice president for</p> <p>5 Academic Affairs, about this is an indication</p> <p>6 that we were all taking it quite seriously.</p> <p>7 Q. Oh, is that right? So let's look at</p> <p>8 the very next sentence. "VP Oliva replied to</p> <p>9 Dr. Davis by e-mail that he was too busy to</p> <p>10 discuss the matter that day."</p> <p>11 That's how serious you and your</p> <p>12 supervisor took it, right?</p> <p>13 A. Sir, I can tell you that my</p> <p>14 supervisor as I reported in these legal</p> <p>15 papers that he replied to me by e-mail that</p> <p>16 he was too busy to discuss it that day. That</p> <p>17 did not stop me from continuing to take it</p> <p>18 seriously.</p> <p>19 Q. Got it.</p> <p>20 So let's see how seriously you took</p> <p>21 it. You don't contact the Affirmative Action</p> <p>22 Office and say, hey, my supervisor is too</p> <p>23 busy to look at it. You do not contact HR.</p> <p>24 Instead, you take it upon yourself to get</p> <p>25 your direct supervisor, someone -- I mean,</p>

<p style="text-align: right;">65</p> <p>1 DAVIS, Ph.D.</p> <p>2 your direct report, right, someone who</p> <p>3 reports directly to you, under your</p> <p>4 supervision, you decide to bring him in so</p> <p>5 that he can hear the concerns about F.I.T.'s</p> <p>6 racial sensitivity, right?</p> <p>7 A. No. Once again, Kyle Farmer was in</p> <p>8 the meeting in his capacity as chairperson of</p> <p>9 the MFA Fashion Design Department. This was</p> <p>10 a departmental matter, and the students asked</p> <p>11 to meet with -- with us.</p> <p>12 Q. Okay.</p> <p>13 So, it's his responsibility, Mr. Farmer's</p> <p>14 responsibility to address issues of F.I.T.'s</p> <p>15 lack of racial sensitivity; is that what you</p> <p>16 are saying?</p> <p>17 A. Theses are two different -- you are</p> <p>18 two different issues, as you see in Paragraph</p> <p>19 33 of the document that we are looking at. I</p> <p>20 alerted Vice President Oliva of that concern.</p> <p>21 The student meeting was about numerous</p> <p>22 issues, including the culture in the MFA</p> <p>23 fashion design studio.</p> <p>24 Q. F.I.T.'s lack of racial sensitivity</p> <p>25 is what you wrote in your lawsuit papers,</p>	<p style="text-align: right;">67</p> <p>1 DAVIS, Ph.D.</p> <p>2 that want to meet and have you and Kyle</p> <p>3 Farmer address the issues about F.I.T.'s lack</p> <p>4 of racial sensitivity --</p> <p>5 MR. DRANOFF: Hold on, Marry.</p> <p>6 Q. -- do you see it in your papers?</p> <p>7 MR. DRANOFF: Hold on, Marry.</p> <p>8 Just objection to form.</p> <p>9 A. It is not relevant to my defamation</p> <p>10 suit.</p> <p>11 Q. No. I'm just asking you. Do you</p> <p>12 see it in your lawsuit papers that the</p> <p>13 students asked you to meet with them about</p> <p>14 their concerns?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 And we just went through your note</p> <p>18 of the February 18th meeting where you don't</p> <p>19 say in there that the students asked you to</p> <p>20 meet with them either, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So the only place that this comes up</p> <p>23 about how these students want to meet with</p> <p>24 you to talk about F.I.T.'s lack of racial</p> <p>25 sensitivity is from your own words, correct?</p>
<p style="text-align: right;">66</p> <p>1 DAVIS, Ph.D.</p> <p>2 right?</p> <p>3 A. What I wrote in my lawsuit paperers</p> <p>4 is that I alerted VP Oliva that some students</p> <p>5 expressed concerns that the use of certain</p> <p>6 accessories at the fashion show raised issues</p> <p>7 about F.I.T.'s lack of racial sensitivity.</p> <p>8 Q. Got it.</p> <p>9 And it was for you and Mr. Farmer to</p> <p>10 address these issues about F.I.T.'s lack of</p> <p>11 racial sensitivity with the students, right?</p> <p>12 A. No, it was not.</p> <p>13 Q. Okay.</p> <p>14 Let's go to the next paragraph.</p> <p>15 "Dr. Davis --" that's you -- realizing that</p> <p>16 the students concerns warranted attention,</p> <p>17 spoke with Professor Farmer and arranged for</p> <p>18 a meeting with all of the second year fashion</p> <p>19 design MFA students to discuss these issues."</p> <p>20 You wrote that too, right or you</p> <p>21 swore to that too, correct?</p> <p>22 A. Yes, it --</p> <p>23 Q. Yes. Okay.</p> <p>24 So now I don't see anywhere in your</p> <p>25 lawsuit paper where the students said to you</p>	<p style="text-align: right;">68</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Once again, sir, the students asked</p> <p>3 to meet with me not about F.I.T.'s lack of</p> <p>4 racial sensitivity, but about their concerns</p> <p>5 that the use of certain accessories at the</p> <p>6 fashion show raised issues about F.I.T.'s</p> <p>7 lack of racial sensitivity.</p> <p>8 They raised concerns with me that</p> <p>9 were much broader and that had to do with the</p> <p>10 culture of the studio for the MFA fashion</p> <p>11 design program.</p> <p>12 Q. Got it.</p> <p>13 So how did the students say to you</p> <p>14 that we want to meet with you; how did they</p> <p>15 say that?</p> <p>16 A. When I met with the two students who</p> <p>17 e-mailed me, they both indicated that they</p> <p>18 wanted -- that they felt they wanted to have</p> <p>19 a meeting, they wanted to air their issues.</p> <p>20 Q. Okay.</p> <p>21 But you did not say that in any of</p> <p>22 your notes or any of your writings, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 So, what you write is, "Dr. Davis,</p>

<p style="text-align: right;">69</p> <p>1 DAVIS, Ph.D.</p> <p>2 realizing that the students concerns warranted</p> <p>3 attention ---"</p> <p>4 Now, you didn't say, "Dr. Davis, in response</p> <p>5 to the students asking for a meeting, spoke</p> <p>6 with Professor Farmer and arranged for a</p> <p>7 meeting," right? You didn't write that, did</p> <p>8 you?</p> <p>9 A. No.</p> <p>10 Q. No. It was, "Dr. Davis, realizing</p> <p>11 that the students concerns warranted</p> <p>12 attention, spoke with Professor Farmer and</p> <p>13 arranged for meeting with all of the second</p> <p>14 year fashion design MFA students to discuss</p> <p>15 these issue," right?</p> <p>16 A. That's correct.</p> <p>17 Q. But today you're saying that these</p> <p>18 two students that you met with said, hey,</p> <p>19 let's have a meeting with the whole second</p> <p>20 year -- with all the second year students so</p> <p>21 we could discuss these issues; is that what</p> <p>22 you are saying?</p> <p>23 A. Yes --</p> <p>24 Q. Okay --</p> <p>25 A. -- those two things are not</p>	<p style="text-align: right;">71</p> <p>1 DAVIS, Ph.D.</p> <p>2 the narrative internally. You wanted to</p> <p>3 stamp out any possible student uprising that</p> <p>4 would lead to your termination, right?</p> <p>5 A. That is -- that is absolutely false.</p> <p>6 Q. Got it.</p> <p>7 Then following the meeting --</p> <p>8 because this is why you're speaking to your</p> <p>9 direct report because you know that he is the</p> <p>10 one that could pull the trigger on you and</p> <p>11 get you fired, right?</p> <p>12 A. I -- I -- I have lost you in this</p> <p>13 theory, Mr. --</p> <p>14 Q. No --</p> <p>15 A. -- I have lost you --</p> <p>16 Q. You have lost me. Okay.</p> <p>17 So following the meeting, you texted</p> <p>18 and briefed -- orally briefed your boss,</p> <p>19 Oliva, on the concerns expressed by students</p> <p>20 and then followed up with a detailed written</p> <p>21 memo, right? That's what you wrote?</p> <p>22 A. That's correct.</p> <p>23 Q. And that's what you did, right?</p> <p>24 A. Yes.</p> <p>25 MR. SELLS: Okay. Can we</p>
<p style="text-align: right;">70</p> <p>1 DAVIS, Ph.D.</p> <p>2 incompatible.</p> <p>3 Q. Got it.</p> <p>4 So the two students said we want</p> <p>5 everyone to meet with you, Dr. Davis, so you</p> <p>6 could just take us through and explain why</p> <p>7 F.I.T. is not being racially insensitive,</p> <p>8 right --</p> <p>9 A. No, I didn't say any of those</p> <p>10 things.</p> <p>11 Q. You didn't?</p> <p>12 A. No, I did not.</p> <p>13 Q. And that's because at this point you</p> <p>14 were trying to save your job and Mr. Farmer's</p> <p>15 job because all around you -- all around you</p> <p>16 the media was talking about how racist this</p> <p>17 fashion show was, including your own</p> <p>18 students, right?</p> <p>19 A. I think that is an</p> <p>20 mischaracterization and overgeneralization of</p> <p>21 a --</p> <p>22 Q. Okay -- okay --</p> <p>23 A. -- in time.</p> <p>24 Q. Got it.</p> <p>25 So what you wanted to do was control</p>	<p style="text-align: right;">72</p> <p>1 DAVIS, Ph.D.</p> <p>2 scroll up.</p> <p>3 Q. And you address it to him and to VP</p> <p>4 Glass, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And neither director suggested that</p> <p>7 you take any further action?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay.</p> <p>10 But you didn't give it to the</p> <p>11 affirmative action officer, right?</p> <p>12 A. This issue by this time was not only</p> <p>13 with the vice president and senior leadership</p> <p>14 of F.I.T.; but it was with the president's</p> <p>15 office directly.</p> <p>16 Q. Now, talking about this issue and</p> <p>17 about the different narratives, let me ask</p> <p>18 you --</p> <p>19 MR. SELLS: We can take down</p> <p>20 the document.</p> <p>21 Q. Let me ask you. You saw Ms. Glass's</p> <p>22 deposition yesterday, correct?</p> <p>23 A. I did.</p> <p>24 Q. You saw where she said she did not</p> <p>25 attend the fashion show; you saw that, right?</p>

<p style="text-align: right;">73</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, I thought that she had.</p> <p>3 Q. Okay.</p> <p>4 So in order to again give the</p> <p>5 different narrative and buildup your case for</p> <p>6 court where you could get the 10 million</p> <p>7 dollars you're looking for, you wanted to</p> <p>8 make it seem that the HR rep. who may have to</p> <p>9 pass on whether or not the accessories that</p> <p>10 your supervisor selected were racist you</p> <p>11 wanted to put her in the audience too,</p> <p>12 correct?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 A. That is -- actually, that is not</p> <p>16 correct --</p> <p>17 Q. No. Okay --</p> <p>18 A. I -- may I --</p> <p>19 MR. SELLS: Could we put backup</p> <p>20 Exhibit 59 and go to paragraph 24.</p> <p>21 (The image is shared on the</p> <p>22 computer screen.)</p> <p>23 Q. What you write in your sworn to</p> <p>24 complaint in paragraph 24 is, "Dr. Brown,</p> <p>25 members of her cabinet and Dr. Davis watched</p>	<p style="text-align: right;">75</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. According to her testimony.</p> <p>3 MR. SELLS: So, let's go to the</p> <p>4 last page of the document. Let's go</p> <p>5 to the verification.</p> <p>6 Q. "I am the plaintiff in the within</p> <p>7 action. I have read the foregoing Verified</p> <p>8 Complaint and know the contents thereof. The</p> <p>9 contents are true to my knowledge except as</p> <p>10 to matters therein stated to be alleged upon</p> <p>11 information and belief; and as to those</p> <p>12 matters, I believe them to be true."</p> <p>13 MR. SELLS: Now let's go back</p> <p>14 to paragraph 24 again.</p> <p>15 Q. Now, on paragraph 24 you don't</p> <p>16 allege on information and belief Cynthia</p> <p>17 Glass was present, right?</p> <p>18 MR. DRANOFF: Note my objection</p> <p>19 to the form.</p> <p>20 A. If Dr. Glass's testimony is correct,</p> <p>21 then this is an error.</p> <p>22 Q. Or it's a lie, correct? You could</p> <p>23 be lying --</p> <p>24 A. No, it's not.</p> <p>25 Q. Obviously, if you swear to tell the</p>
<p style="text-align: right;">74</p> <p>1 DAVIS, Ph.D.</p> <p>2 the show from the front rows of the venue.</p> <p>3 Cabinet members in the audience included VP</p> <p>4 Oliva, who has noted above was Dr. Davis'</p> <p>5 direct supervisor, Cynthia M. Glass, vice</p> <p>6 president for Human Resources Management and</p> <p>7 labor relations."</p> <p>8 You put that in there, correct?</p> <p>9 A. That was in error.</p> <p>10 Q. Oh. Okay. Okay. Got it.</p> <p>11 A. Allow me to finish, please --</p> <p>12 Q. But if we could go --</p> <p>13 MR. DRANOFF: Let her finish</p> <p>14 the answer, please.</p> <p>15 A. Allow me to finish my answer,</p> <p>16 please.</p> <p>17 Q. Sure, go ahead.</p> <p>18 A. I believe -- I believed that Dr. Glass</p> <p>19 was in the audience. She was invited. I did</p> <p>20 not control the invitation list, nor did I</p> <p>21 control any kind of admission to the fashion</p> <p>22 show. I believed her to have been there.</p> <p>23 That was a mistake, according to her test- --</p> <p>24 according to her testimony.</p> <p>25 Q. Mistake --</p>	<p style="text-align: right;">76</p> <p>1 DAVIS, Ph.D.</p> <p>2 truth and then it turns out that you get</p> <p>3 caught, then you could say, "Oh, it was an</p> <p>4 error." Or it's a lie, right?</p> <p>5 A. Is there a question?</p> <p>6 Q. Yes.</p> <p>7 A. I already explained. I believed</p> <p>8 that Dr. Glass was in the audience when this</p> <p>9 complaint was filed.</p> <p>10 Q. You believed, so you should have put</p> <p>11 on information and belief --</p> <p>12 A. Oh.</p> <p>13 Q. -- right?</p> <p>14 MR. DRANOFF: Object to the</p> <p>15 form.</p> <p>16 A. I believed that she was there.</p> <p>17 Q. No, you knew she was there because</p> <p>18 you swore to tell the truth on matters that</p> <p>19 appear in here. You said they are true. You</p> <p>20 swore to it that they are true; and as to</p> <p>21 matters that are mentioned on information and</p> <p>22 belief, you believed them to be true.</p> <p>23 And here you do not say "on</p> <p>24 information and belief." You say she was</p> <p>25 there, which under your own verification is a</p>

<p style="text-align: right;">77</p> <p>1 DAVIS, Ph.D.</p> <p>2 lie itself; not true --</p> <p>3 A. You --</p> <p>4 Q. -- right?</p> <p>5 A. You may characterize it however</p> <p>6 you'd like.</p> <p>7 Q. Well, you used "on information and</p> <p>8 belief." You used it in your complaint,</p> <p>9 right?</p> <p>10 A. Again, yes, I did.</p> <p>11 Q. Okay.</p> <p>12 But for this paragraph, you said she</p> <p>13 was there --</p> <p>14 A. You can --</p> <p>15 Q. -- that turns out to be a lie,</p> <p>16 correct?</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 A. You can --</p> <p>20 MR. DRANOFF: A mistake is not</p> <p>21 a lie, Bruce -- excuse me, Derek. If</p> <p>22 in fact it was a mistake even.</p> <p>23 Q. Now, you indicated that that Mr. Farmer</p> <p>24 received death threats; is that right?</p> <p>25 A. Yes, as did Mr. Thornn.</p>	<p style="text-align: right;">79</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Okay.</p> <p>3 So, again in paragraph 39, even</p> <p>4 though you did not see the death threats</p> <p>5 yourself, you swear that they were -- that</p> <p>6 they happened, correct?</p> <p>7 A. I'm just reading the paragraph.</p> <p>8 I would need to refresh my memory on</p> <p>9 whether I saw the e-mail -- an e-mail from</p> <p>10 Richard Thornn regarding death threats. I</p> <p>11 believe -- I believe I saw an e-mail</p> <p>12 regarding that from Mr. Thornn.</p> <p>13 Q. Oh. So you're changing your</p> <p>14 testimony again when you don't put it in on</p> <p>15 information and belief and you actually swear</p> <p>16 to it, now all of a sudden -- whereas before</p> <p>17 you said, Oh, I didn't see them. They just</p> <p>18 told me about them.</p> <p>19 But now when you get called to the</p> <p>20 carpet on them you say, Oh, wait. Wait.</p> <p>21 Maybe I did see it. Maybe I did see it --</p> <p>22 A. I --</p> <p>23 Q. -- do you see?</p> <p>24 MR. DRANOFF: Object to the</p> <p>25 form.</p>
<p style="text-align: right;">78</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Who did these death threats come</p> <p>3 from?</p> <p>4 A. I do not know.</p> <p>5 Q. What did F.I.T. do in response to</p> <p>6 the death threats?</p> <p>7 A. I do not know.</p> <p>8 Q. Well, how do you know they got the</p> <p>9 death threats?</p> <p>10 A. Because both of them in -- I'm</p> <p>11 trying to think if it was in meetings or -- I</p> <p>12 believe it was with Mr. Thornn in e-mails</p> <p>13 indicated that he had received death threats.</p> <p>14 Kyle Farmer reported not just to me but to</p> <p>15 others that he had received death threats on</p> <p>16 social media.</p> <p>17 Q. And why? What were the death</p> <p>18 threats for?</p> <p>19 A. I did not see them; so I cannot</p> <p>20 speak to them.</p> <p>21 Q. Okay.</p> <p>22 But you just believe them; you just</p> <p>23 believe whatever they told you, correct?</p> <p>24 A. I have -- I'm just reporting what</p> <p>25 they said.</p>	<p style="text-align: right;">80</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Do you see what you are doing?</p> <p>3 MR. DRANOFF: Object to the</p> <p>4 form.</p> <p>5 Q. Do you see how you are trying to</p> <p>6 walk this fine line between trying to get 10</p> <p>7 million dollars and how you are trying to</p> <p>8 defend against lawsuit, right?</p> <p>9 A. This is --</p> <p>10 MR. DRANOFF: Just one second.</p> <p>11 This objection is based on</p> <p>12 harassment.</p> <p>13 Go on, Mary.</p> <p>14 A. Mr. Sells, I am trying to answer</p> <p>15 your questions as thoroughly as I possibly</p> <p>16 can. I will need or would need to see</p> <p>17 documents from Richard Thornn to recall if</p> <p>18 this paragraph was based on seeing an e-mail</p> <p>19 from him or if it was based on reporting from</p> <p>20 him or others.</p> <p>21 I do know that he reported --</p> <p>22 Mr. Thornn reported death -- that he had had</p> <p>23 death threats.</p> <p>24 Q. Okay --</p> <p>25 A. Also, may I ask you --</p>

<p style="text-align: right;">81</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. No. --</p> <p>3 MR. DRANOFF: No. No. No.</p> <p>4 No. Don't --</p> <p>5 Q. You have to answer. You cannot just</p> <p>6 go on with what you want to say.</p> <p>7 Now, Dr. Davis, you allege broadly</p> <p>8 that President Brown, in conjunction with</p> <p>9 trying to defend F.I.T.'s reputation, crafted</p> <p>10 a false narrative about how F.I.T. was not</p> <p>11 acting in a racist way, but rather that you</p> <p>12 and Mr. Farmer were responsible; isn't that</p> <p>13 right?</p> <p>14 A. No, that is a mischaracterization of</p> <p>15 my lawsuit.</p> <p>16 Q. I see.</p> <p>17 So, you didn't say that President</p> <p>18 Brown lied?</p> <p>19 A. I'm --</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 A. I'm -- can you -- can you -- can you</p> <p>23 clarify that question to -- to give me a time</p> <p>24 or a document to which that relates.</p> <p>25 Q. No. I am asking you a question.</p>	<p style="text-align: right;">83</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I'm answering it.</p> <p>3 Q. So, you need to see the document to</p> <p>4 know whether or not you alleged that</p> <p>5 Dr. Brown lied?</p> <p>6 A. I need to know if I used that word.</p> <p>7 Q. And what happens if you didn't?</p> <p>8 A. I just need to know whether I did.</p> <p>9 If you're -- if you're saying -- if you're</p> <p>10 putting those words in my mouth, I would like</p> <p>11 to see them particularly since we have the</p> <p>12 document up in front of us.</p> <p>13 Q. So, you don't know whether or not</p> <p>14 Dr. Brown lied; is that correct?</p> <p>15 A. I am not sure what you are referring</p> <p>16 to, if you are referring to a specific</p> <p>17 instance or whether you are referring to a</p> <p>18 general instance.</p> <p>19 Also, I'm not sure if you are</p> <p>20 referring to language in this lawsuit or</p> <p>21 something else. So I need for you to clarify</p> <p>22 those points for me, please.</p> <p>23 Q. What is your understanding of</p> <p>24 "defamation"?</p> <p>25 MR. DRANOFF: Object to the</p>
<p style="text-align: right;">82</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, I can't --</p> <p>3 Q. Did you allege that Dr. Brown lied</p> <p>4 in blaming you in part for the clearly racist</p> <p>5 fashion show?</p> <p>6 A. Are you referring to -- these are --</p> <p>7 does your question go to whether I made that</p> <p>8 statement in this legal paper, in this</p> <p>9 lawsuit?</p> <p>10 Q. Yes. I'm saying it.</p> <p>11 A. So let's take a look, as long as we</p> <p>12 have the document up, if you could show me</p> <p>13 what you are referring to that would be very</p> <p>14 helpful.</p> <p>15 Q. No. I am asking you as you sit here</p> <p>16 now, did you allege that Dr. Brown lied in</p> <p>17 creating a false narrative about how the</p> <p>18 racist fashion show was done?</p> <p>19 MR. DRANOFF: Object to the</p> <p>20 form.</p> <p>21 A. I don't recall if I used the word</p> <p>22 "lie" in this document. That is why I would</p> <p>23 like to see the language that you are</p> <p>24 referring to.</p> <p>25 Q. I'm asking you a question.</p>	<p style="text-align: right;">84</p> <p>1 DAVIS, Ph.D.</p> <p>2 form. She is not a lawyer.</p> <p>3 A. Yup, I'm not a lawyer. My --</p> <p>4 Q. I asked what your understanding of</p> <p>5 "defamation" is?</p> <p>6 A. "Defamation" is -- see, I actually</p> <p>7 can't answer that question; because I know</p> <p>8 what it is and how it is being used regarding</p> <p>9 me and in my case.</p> <p>10 But I can't speak to the legal</p> <p>11 principle of defamation or the broader issues</p> <p>12 around it.</p> <p>13 Q. Okay.</p> <p>14 Well, why do you think you were</p> <p>15 defamed?</p> <p>16 A. I think I was defamed because I was</p> <p>17 used, as I have said in other legal papers,</p> <p>18 as a scapegoat in this case when F.I.T.</p> <p>19 wished to blame someone for what happened at</p> <p>20 the fashion show for the -- for the use of</p> <p>21 accessories that were assumed to be racist by</p> <p>22 some people and reported in the press as</p> <p>23 being racist.</p> <p>24 I think F.I.T. wanted to blame --</p> <p>25 wanted to place blame on me for that unfairly</p>

<p style="text-align: right;">85</p> <p>1 DAVIS, Ph.D.</p> <p>2 and improperly.</p> <p>3 Q. That's your understanding of your</p> <p>4 lawsuit; that you were made a scapegoat?</p> <p>5 A. That is part of my lawsuit, yes.</p> <p>6 Q. Okay.</p> <p>7 I don't understand that as being</p> <p>8 defamation. Tell me how that's defamation?</p> <p>9 MR. DRANOFF: Object, and she</p> <p>10 is not going to testify about that</p> <p>11 cases allegations from a legal</p> <p>12 perspective, Derek. That's why --</p> <p>13 MR. SELLS: I'm asking her --</p> <p>14 Q. Did you authorize a suit, a 10</p> <p>15 million dollar suit for defamation?</p> <p>16 A. I did.</p> <p>17 Q. So, you're saying you authorized a</p> <p>18 10 million dollar lawsuit for defamation, you</p> <p>19 signed a verification stating that everything</p> <p>20 in the complaint is true, but you don't</p> <p>21 understand what "defamation" is; is that</p> <p>22 correct?</p> <p>23 MR. DRANOFF: Object to the</p> <p>24 form.</p> <p>25 Derek, again, you are asking</p>	<p style="text-align: right;">87</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Do you think that's what F.I.T. and</p> <p>3 Dr. Brown did here, they made a false</p> <p>4 statement that could have been a mistake and</p> <p>5 not really been a lie; is that correct?</p> <p>6 A. No, that -- that is not if case in --</p> <p>7 in this situation.</p> <p>8 Q. So, you think that the false</p> <p>9 statements that Dr. Brown and F.I.T. made</p> <p>10 were lies, correct?</p> <p>11 A. Once again, I would want to see the</p> <p>12 language in the suit to -- to affirm that the</p> <p>13 word "lie," is used in the legal documents.</p> <p>14 MR. SELLS: I would like to go</p> <p>15 to page 24.</p> <p>16 Q. This is the second claim in your</p> <p>17 lawsuit, right?</p> <p>18 A. Yes.</p> <p>19 Q. What you allege is that "Defendant's</p> <p>20 statements regarding Dr. Davis were false and</p> <p>21 defamatory in multiple ways." There is a</p> <p>22 whole list. "The false claim is that</p> <p>23 Dr. Davis was in charge of and responsible</p> <p>24 for overseeing the show."</p> <p>25 Right, that is one thing you said</p>
<p style="text-align: right;">86</p> <p>1 DAVIS, Ph.D.</p> <p>2 her legal opinions and that is not an</p> <p>3 appropriate question.</p> <p>4 Q. Okay.</p> <p>5 So, Dr. Davis, just so I'm clear,</p> <p>6 you don't know whether or not you are</p> <p>7 accusing Dr. Brown and other people at F.I.T.</p> <p>8 of lying as part of your lawsuit; is that</p> <p>9 correct?</p> <p>10 A. I, again, am concerned about your</p> <p>11 use of the word "lie" in -- in connection</p> <p>12 with this.</p> <p>13 Q. Okay.</p> <p>14 Well, would you consider someone</p> <p>15 making a false statement to be a lie?</p> <p>16 A. Not necessarily.</p> <p>17 Q. Okay.</p> <p>18 So, tell me what situation would</p> <p>19 someone making a false statement about you not</p> <p>20 be a lie?</p> <p>21 A. Someone could make an honest mistake</p> <p>22 and say something that wasn't factually true.</p> <p>23 That is --</p> <p>24 Q. Did --</p> <p>25 A. -- that is different -- go ahead.</p>	<p style="text-align: right;">88</p> <p>1 DAVIS, Ph.D.</p> <p>2 F.I.T. and Dr. Brown lied about, right?</p> <p>3 MR. DRANOFF: Object to the</p> <p>4 form.</p> <p>5 Derek, these are specific legal</p> <p>6 allegations in the complaint relating</p> <p>7 to defamation. They will be taken on</p> <p>8 the face of what they are in the</p> <p>9 context of that particular pleading.</p> <p>10 This is far beyond Dr. Davis's</p> <p>11 ability to interpret the nuisances of</p> <p>12 the actual legal principles involved.</p> <p>13 The document says what it says,</p> <p>14 and I think we should put an end to</p> <p>15 this inquire. I'll let you go a</p> <p>16 little longer, but it's getting</p> <p>17 beyond what is appropriate.</p> <p>18 MR. SELLS: I think you will</p> <p>19 see where I'm going, Eric.</p> <p>20 MR. DRANOFF: All right. I'm a</p> <p>21 patient man.</p> <p>22 MR. SELLS: All right.</p> <p>23 Q. So, one of the things that F.I.T.</p> <p>24 did was lie about you being in charge of and</p> <p>25 responsible for overseeing the show?</p>



<p style="text-align: right;">89</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Continued</p> <p>3 objection --</p> <p>4 Q. Is that right?</p> <p>5 A. As stated in the document, they made</p> <p>6 a false claim.</p> <p>7 Q. Okay.</p> <p>8 So, you don't think it was just a</p> <p>9 mis-statement of fact or an opinion on their</p> <p>10 part, right?</p> <p>11 MR. DRANOFF: Again, Derek, you</p> <p>12 are asking her things of legal</p> <p>13 significance within the context of</p> <p>14 her defamation --</p> <p>15 MR. SELLS: No, I'm not.</p> <p>16 MR. DRANOFF: When you are</p> <p>17 talking about an opinion that relates</p> <p>18 directly to the defamation case --</p> <p>19 MR. SELLS: No. No, you will</p> <p>20 see where I'm going. Just hear me</p> <p>21 out.</p> <p>22 MR. DRANOFF: I'm hearing you</p> <p>23 out, but --</p> <p>24 MR. SELLS: I'm just trying to</p> <p>25 figure out whether your client</p>	<p style="text-align: right;">91</p> <p>1 DAVIS, Ph.D.</p> <p>2 about. But maybe I'm -- maybe I</p> <p>3 missed it. But anyway I'll ask.</p> <p>4 Q. Is part of your claim, Dr. Davis,</p> <p>5 that F.I.T. lied about your involvement with</p> <p>6 this show?</p> <p>7 A. As you see here in the claim, I</p> <p>8 assert that they made false claims about my</p> <p>9 role.</p> <p>10 Q. Okay.</p> <p>11 But you just said that when you say</p> <p>12 "false claims," that it might not be a lie.</p> <p>13 It might be a mistake, and I'm trying to</p> <p>14 understand what your allegation is.</p> <p>15 Are you saying that they mistakenly</p> <p>16 made a false claim, or are you saying that</p> <p>17 they affirmatively created a lie so as to</p> <p>18 scapegoat you and avoid negative publicity on</p> <p>19 them?</p> <p>20 MR. DRANOFF: You know what,</p> <p>21 Derek, I think I can make this easier</p> <p>22 for you. If you scroll down, it may</p> <p>23 be allegations regarding the</p> <p>24 nature -- specific nature of that</p> <p>25 conduct. All right? I don't want</p>
<p style="text-align: right;">90</p> <p>1 DAVIS, Ph.D.</p> <p>2 believes in the lawsuit that she</p> <p>3 filed. I mean, it's really simple to</p> <p>4 me that defamation means that someone</p> <p>5 lied and said something that is not</p> <p>6 true that was harmful to one's</p> <p>7 reputation. I'm just --</p> <p>8 MR. DRANOFF: Well, that's --</p> <p>9 MR. SELLS: It's a question. I</p> <p>10 would think she would say yes, that's</p> <p>11 a lie.</p> <p>12 MR. DRANOFF: That is where the</p> <p>13 misstep is, Derek. In a defamation</p> <p>14 case --</p> <p>15 MR. SELLS: Okay --</p> <p>16 MR. DRANOFF: -- something does</p> <p>17 not have to be a lie.</p> <p>18 MR. SELLS: I understand it.</p> <p>19 I'm asking her for her -- these are</p> <p>20 her own allegations. I'm just asking</p> <p>21 her whether she believes that she was</p> <p>22 defamed because, you know, F.I.T.</p> <p>23 created a lie about what happened so</p> <p>24 that she could be scapegoated. I</p> <p>25 thought that's what this lawsuit was</p>	<p style="text-align: right;">92</p> <p>1 DAVIS, Ph.D.</p> <p>2 her paraphrasing.</p> <p>3 MR. SELLS: All right. I got</p> <p>4 you.</p> <p>5 Q. So, we have all the list of false</p> <p>6 claims here, right? Let's talk about those.</p> <p>7 That F.I.T., they said falsely that</p> <p>8 you were "in charge of and responsible for</p> <p>9 overseeing the show," correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you say that another false claim</p> <p>12 that F.I.T. and Dr. Brown made was that you</p> <p>13 provided accessories at issue to a student;</p> <p>14 is that right?</p> <p>15 A. Correct.</p> <p>16 Q. And they also, Dr. Brown and F.I.T.,</p> <p>17 claim that it was obvious to everyone, except</p> <p>18 for you and Kyle Farmer, that the accessories</p> <p>19 were racist, right?</p> <p>20 A. Correct.</p> <p>21 Q. They also made the false claim --</p> <p>22 and again, by they I mean Dr. Brown and</p> <p>23 F.I.T. -- that by providing accessories to a</p> <p>24 student or failing to stop their inclusion in</p> <p>25 the fast, you failed to recognize or</p>



<p style="text-align: right;">93</p> <p>1 DAVIS, Ph.D.</p> <p>2 anticipate the racist references or cultural</p> <p>3 insensitivities obvious to everyone else,</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. And you made the claim that Dean Brown</p> <p>7 and F.I.T. made the false claim your actions</p> <p>8 and inactions were failures that were</p> <p>9 inexcusable and irresponsible, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you also made the allegation</p> <p>12 that F.I.T., through it's President and</p> <p>13 others, made the false claim that you were</p> <p>14 not fit to be dean of the School of Graduate</p> <p>15 Studies, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you also make the claim that</p> <p>18 Dr. Brown and F.I.T. and those that were</p> <p>19 involved in creating the statement said that</p> <p>20 your actions and inactions constituted</p> <p>21 inexcusable and irresponsible failures</p> <p>22 demonstrating that you are a racist and unfit</p> <p>23 to be dean; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that you and -- that President</p>	<p style="text-align: right;">95</p> <p>1 DAVIS, Ph.D.</p> <p>2 so that they could cover up their own</p> <p>3 involvement in a racist fashion show; is that</p> <p>4 right?</p> <p>5 A. No, that is not right.</p> <p>6 And also, looking again at the</p> <p>7 language in Number 83, it's very specific;</p> <p>8 and again, I'm not an attorney, but it's --</p> <p>9 it's purposeful in saying that they</p> <p>10 "published the false statements knowing they</p> <p>11 were false."</p> <p>12 I'm not sure because I don't have a</p> <p>13 dictionary in front of me, I'm not sure if</p> <p>14 that meets the definition of a lie. That</p> <p>15 seems to me like very specific and very</p> <p>16 purposeful.</p> <p>17 Q. Well, I'm not asking you for your</p> <p>18 legal definition.</p> <p>19 A. Well, you're asking me to --</p> <p>20 Q. I'm just asking your opinion. Do</p> <p>21 you think it was a lie? Do you think it was</p> <p>22 a lie? And if you are saying you don't know,</p> <p>23 then okay --</p> <p>24 A. I --</p> <p>25 Q. -- you don't know. All right --</p>
<p style="text-align: right;">94</p> <p>1 DAVIS, Ph.D.</p> <p>2 Brown and F.I.T., their claim that an</p> <p>3 independent investigation would uncover how</p> <p>4 and why you and Professor Farmer failed to</p> <p>5 recognize or anticipate the racist references</p> <p>6 and cultural insensitivities that were</p> <p>7 obvious to everyone else was another false</p> <p>8 claim; is that right?</p> <p>9 A. That is correct.</p> <p>10 Q. Then if we go further, you say that --</p> <p>11 MR. DRANOFF: I think you are</p> <p>12 looking for paragraph --</p> <p>13 MR. SELLS: 84.</p> <p>14 MR. DRANOFF: -- 83 and 84.</p> <p>15 Q. "Defendants published a false</p> <p>16 statement about Dr. Davis knowing they were</p> <p>17 false."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And that would constitute a lie; is</p> <p>21 that correct?</p> <p>22 A. That would constitute a lie.</p> <p>23 Q. Okay.</p> <p>24 So your allegations are that F.I.T.</p> <p>25 and Dr. Brown, the president, lied about you</p>	<p style="text-align: right;">96</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, that is not my answer, sir. My</p> <p>3 answer is that there is a difference between</p> <p>4 saying something and publishing something</p> <p>5 that's false with knowledge that it's false</p> <p>6 and lying.</p> <p>7 MR. DRANOFF: Again, let me</p> <p>8 object. The pleadings say what the</p> <p>9 pleadings say for whatever particular</p> <p>10 legal significance they have. This</p> <p>11 is not a deposition in her defamation</p> <p>12 action.</p> <p>13 MR. SELLS: Okay.</p> <p>14 Q. The point though is -- well, let me</p> <p>15 ask you this --</p> <p>16 MR. SELLS: We can take down</p> <p>17 the document.</p> <p>18 Q. Who worked with Dr. Brown to create</p> <p>19 these false statements about you?</p> <p>20 A. I can't say for certain.</p> <p>21 Q. Well, you said that when the media</p> <p>22 started getting mobilized about this storey,</p> <p>23 how F.I.T. put on this racist fashion show,</p> <p>24 that you were part of a team with the</p> <p>25 President that met multiple times to figure</p>

<p style="text-align: right;">97</p> <p>1 DAVIS, Ph.D.</p> <p>2 out a strategy on how to deal with these</p> <p>3 issues; is that right?</p> <p>4 A. That's correct.</p> <p>5 First of all, though, I would like</p> <p>6 to just --</p> <p>7 Q. Well, no. No. You can't just talk.</p> <p>8 You have to answer the questions, all right.</p> <p>9 I get it. You want to get your word out and</p> <p>10 your lawyer can ask you questions at the end,</p> <p>11 if he would like. But just answer my</p> <p>12 questions.</p> <p>13 So when you had these meetings, who</p> <p>14 was part of that team that was responding to</p> <p>15 this? Just tell me who they were.</p> <p>16 A. Loretta Keane, the Vice President</p> <p>17 for Communications and External Relations.</p> <p>18 Jennifer Loturco, L-O-T-U-R-C-O, who was the</p> <p>19 deputy to the President. It's possible that</p> <p>20 Alex Mann, the communication specialist, was</p> <p>21 in one of those meetings. Mann with two Ns.</p> <p>22 I cannot recall if Vice President</p> <p>23 Oliva was in one or more of those meetings.</p> <p>24 I think that's it.</p> <p>25 Q. What about VP Glass, was she in</p>	<p style="text-align: right;">99</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Tell me about that meeting.</p> <p>3 A. As I recall, Kyle was asked by Vice</p> <p>4 President Keane about Jung Ki's accessories.</p> <p>5 He explained his role, as I have explained it</p> <p>6 already; and as I recall, it was at Vice</p> <p>7 President Keane's suggestion that Kyle worked</p> <p>8 on a statement that he published taking</p> <p>9 responsibility for the use of the</p> <p>10 accessories.</p> <p>11 Q. All right.</p> <p>12 So, as you sat there and you</p> <p>13 listened first to what you claimed Mr. Farmer</p> <p>14 said, which was I didn't select those</p> <p>15 accessories, Vice President Keane still said</p> <p>16 to Mr. Farmer that he should take</p> <p>17 responsibility; is that right?</p> <p>18 A. I don't recall the exact words that</p> <p>19 were used in that meeting; but that was being</p> <p>20 part of the meeting as I recall.</p> <p>21 Q. So, you sat there and you witnessed</p> <p>22 F.I.T. trying to come up with a false</p> <p>23 narrative that somehow Mr. Farmer should take</p> <p>24 responsibility for something that he claims</p> <p>25 he did not do --</p>
<p style="text-align: right;">98</p> <p>1 DAVIS, Ph.D.</p> <p>2 those meetings?</p> <p>3 A. I'm trying to recall. I don't know.</p> <p>4 I don't recall.</p> <p>5 Q. In those meetings that you attended,</p> <p>6 no one indicated that you had any</p> <p>7 responsibility for the fashion show; isn't</p> <p>8 that right?</p> <p>9 A. Those meetings were about</p> <p>10 communication strategy. They were not about</p> <p>11 identifying responsibility for the show as I</p> <p>12 recall it.</p> <p>13 Q. Well in your complaint, what you</p> <p>14 allege is that at the behest of the</p> <p>15 administration -- and we read through this --</p> <p>16 Professor Farmer, Kyle Farmer, and Thornn</p> <p>17 publicly took responsibility for the</p> <p>18 decisions that had been made with respect to</p> <p>19 the accessories; isn't that right?</p> <p>20 A. I did.</p> <p>21 Q. So is that something that was</p> <p>22 discussed in the these meetings that you</p> <p>23 attended?</p> <p>24 A. I was in one meeting where Kyle's</p> <p>25 apology was discussed.</p>	<p style="text-align: right;">100</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Object to the</p> <p>3 form --</p> <p>4 Q. -- is that right?</p> <p>5 A. No, that is not right. I don't</p> <p>6 believe it was a false narrative. I believe</p> <p>7 that Kyle -- and you would need to speak to</p> <p>8 him about this -- but I think that the issue</p> <p>9 was, again, an issue related to term --</p> <p>10 terminology and responsibility was the word</p> <p>11 that was at issue there.</p> <p>12 Because Mr. Thornn was a contract</p> <p>13 employee and not an in-house employee at</p> <p>14 F.I.T., I believe that -- well, I'll just</p> <p>15 leave it there. Mr. Thornn was a contract</p> <p>16 employee.</p> <p>17 Q. So, I'm not following you.</p> <p>18 You said earlier that Mr. Farmer had</p> <p>19 no role in the selection of the accessories --</p> <p>20 A. No, sir.</p> <p>21 Q. -- is that right?</p> <p>22 A. No, sir, that is not correct.</p> <p>23 Q. So, he did have a role?</p> <p>24 A. I explained his role. I -- I -- as</p> <p>25 I said before, Jung Ki Wang reached out to</p>

<p style="text-align: right;">101</p> <p>1 DAVIS, Ph.D.</p> <p>2 Kyle Farmer as he was trying to complete the</p> <p>3 preparations for the fashion show and had not</p> <p>4 finalized the designs that he intended to use</p> <p>5 as accessories. He asked Mr. Farmer for</p> <p>6 recommendations on how he could address the</p> <p>7 problem.</p> <p>8 Mr. Farmer went to Amazon, pulled up</p> <p>9 some websites for -- from Amazon and sent the</p> <p>10 list to Mr. Wang who then selected the</p> <p>11 accessories.</p> <p>12 Q. So, how did Kyle Farmer have</p> <p>13 anything, any responsibility in what</p> <p>14 accessories Mr. Wang chose if he just --</p> <p>15 MR. DRANOFF: One second. One</p> <p>16 second --</p> <p>17 Q. -- if he --</p> <p>18 MR. DRANOFF: Lesley, can you</p> <p>19 read that back.</p> <p>20 (Whereupon, the requested</p> <p>21 portion of the transcript was read</p> <p>22 back.)</p> <p>23 Q. -- if he just sent Mr. Wang some</p> <p>24 websites from which to choose whatever</p> <p>25 accessories he ultimately chose?</p>	<p style="text-align: right;">103</p> <p>1 DAVIS, Ph.D.</p> <p>2 narrative is accurate. And secondly, Kyle</p> <p>3 Farmer did provide a list from which Mr. Wang</p> <p>4 worked. So Kyle Farmer was in fault in the</p> <p>5 selection of the accessories to that extent.</p> <p>6 Q. Okay.</p> <p>7 So, he did have involvement?</p> <p>8 A. As I have explained, yes.</p> <p>9 Q. Got it --</p> <p>10 A. Not in the selection, but in</p> <p>11 providing a list from which Mr. Wang</p> <p>12 selected.</p> <p>13 Q. Now, you also took offense at</p> <p>14 Dr. Brown's public statement that you contend</p> <p>15 contained false allegations about you and</p> <p>16 your role in this; is that correct?</p> <p>17 A. I don't know which statement you are</p> <p>18 referring to.</p> <p>19 Q. Well, you were the one who claims to</p> <p>20 be defamed, right?</p> <p>21 A. Are you referring to her public</p> <p>22 statement of February 21, 2020?</p> <p>23 Q. Well, you tell me. You tell me.</p> <p>24 Which one did you --</p> <p>25 A. You --</p>
<p style="text-align: right;">102</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I can't speak for Kyle and what he</p> <p>3 did or did not feel. But he did provide the</p> <p>4 list from which Jung Ki selected.</p> <p>5 Q. Okay.</p> <p>6 So you thought that the</p> <p>7 administration or VP Keane saying to Mr. Farmer,</p> <p>8 "We want you to write a public apology for --"</p> <p>9 as you put in your complaint "-- for the</p> <p>10 decisions that had been made with respect to</p> <p>11 the accessories" was perfectly okay, right?</p> <p>12 A. I'm not sure what you mean that I</p> <p>13 thought it was perfectly okay.</p> <p>14 Q. Well, you didn't complain about it,</p> <p>15 did you?</p> <p>16 A. I don't recall complaining about it.</p> <p>17 Q. Yes. And you didn't say, "Oh, my</p> <p>18 goodness. You know, why are you trying to</p> <p>19 create this false narrative when in fact</p> <p>20 Mr. Farmer didn't have anything to do with</p> <p>21 the selection of the accessories? He only</p> <p>22 provided a list from which the selections</p> <p>23 could be made."</p> <p>24 A. So I -- I -- I don't believe that</p> <p>25 your characterization of this as a false</p>	<p style="text-align: right;">104</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- that you felt defamed about?</p> <p>3 A. That is -- that statement from</p> <p>4 February 21st, 2020 is the statement at issue</p> <p>5 in the lawsuit.</p> <p>6 Q. Okay.</p> <p>7 So what about that statement was</p> <p>8 false?</p> <p>9 A. Again, the question of things being</p> <p>10 false and the way in which they added up to</p> <p>11 being defamatory is the subject of the entire</p> <p>12 lawsuit. And so it is complicated and it is</p> <p>13 fully explained in the document that you</p> <p>14 have.</p> <p>15 Q. Okay. Let's talk about that and how</p> <p>16 you characterize it in your lawsuit papers.</p> <p>17 Again, as you try and parse through</p> <p>18 whether it's a lie or false statement. Let's</p> <p>19 talk about --</p> <p>20 MR. SELL: If we could go back</p> <p>21 to Exhibit 59 and just starting with</p> <p>22 paragraph 48.</p> <p>23 Q. So, this is the way you swear to it</p> <p>24 in your complaint. First you say,</p> <p>25 "Dr. Brown's statement was false and can be</p>

<p style="text-align: right;">105</p> <p>1 DAVIS, Ph.D.</p> <p>2 proven to be false in at least three material</p> <p>3 ways.</p> <p>4 First, Dr. Brown's statement was</p> <p>5 false in asserting that Dr. Davis, the dean</p> <p>6 of the School of Graduate Studies, was in</p> <p>7 charge of and responsible for overseeing the</p> <p>8 content of the show, including the choice of</p> <p>9 accessories; and that she failed in those</p> <p>10 professional responsibilities.</p> <p>11 As set forth above, that statement</p> <p>12 was completely untrue and that Dr. Davis had</p> <p>13 no responsibility and there for could not</p> <p>14 have failed in the discharge of those</p> <p>15 duties."</p> <p>16 Right? That's one thing that you</p> <p>17 put if your lawsuit, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Then in Paragraph 49 you say, "Next,</p> <p>20 Dr. Brown's statement that almost everyone,</p> <p>21 i.e. except Dr. Davis and Professor Farmer,</p> <p>22 recognized the obvious racist references and</p> <p>23 cultural insensitivities in the accessories</p> <p>24 was false."</p> <p>25 I'm going to just stop there for a</p>	<p style="text-align: right;">107</p> <p>1 DAVIS, Ph.D.</p> <p>2 neither Dr. Brown nor a single member of her</p> <p>3 cabinet nor any of the F.I.T. foundational</p> <p>4 board of trustees who attended the show</p> <p>5 voiced any such reaction, nor had the vast</p> <p>6 majority of the spectators who attended it</p> <p>7 the fashion show or watched the video</p> <p>8 online."</p> <p>9 I see. So is what you are saying</p> <p>10 that in fact most people who looked at the</p> <p>11 accessories on Wang's -- from Wang's fashions</p> <p>12 did not find those accessories to be racially</p> <p>13 offensive; is that what you are saying?</p> <p>14 MR. DRANOFF: Object to the</p> <p>15 form.</p> <p>16 A. No, it doesn't say that they didn't</p> <p>17 feel that way. It says they did not voice</p> <p>18 any such reaction.</p> <p>19 Q. Got it.</p> <p>20 So in other words, you're saying</p> <p>21 that since Dr. Brown nor the F.I.T.</p> <p>22 foundation or board of trustees nor a single</p> <p>23 member of her cabinet had this reaction at</p> <p>24 the time that the fashion show took place,</p> <p>25 that their subsequent statement, this</p>
<p style="text-align: right;">106</p> <p>1 DAVIS, Ph.D.</p> <p>2 second. When you say that was false, what</p> <p>3 about that statement was false?</p> <p>4 A. I --</p> <p>5 MR. DRANOFF: Objection.</p> <p>6 Again, Derek, you are asking</p> <p>7 questions concerning her defamation</p> <p>8 claim.</p> <p>9 MR. SELLS: No, I'm just trying</p> <p>10 to figure out what -- what's false</p> <p>11 about that.</p> <p>12 Q. When you say, "Dr. Brown's statement</p> <p>13 that almost everyone, i.e. except Dr. Davis</p> <p>14 and Professor Farmer, recognized it the</p> <p>15 obvious racist references and cultural</p> <p>16 insensitivities --" both of which are in</p> <p>17 quotations "-- in the accessories was false."</p> <p>18 And so --</p> <p>19 MR. DRANOFF: I think the rest</p> <p>20 of the context to that is expressed</p> <p>21 in that paragraph.</p> <p>22 Q. Okay. So it declares as a factual</p> <p>23 matter that the accessories referred to</p> <p>24 racial tropes and were culturally</p> <p>25 insensitive. "However, as set forth above,</p>	<p style="text-align: right;">108</p> <p>1 DAVIS, Ph.D.</p> <p>2 statement, of the 21st wherein the alleged</p> <p>3 that almost everyone knew it to be racist at</p> <p>4 the time except for you and Mr. Farmer was</p> <p>5 untrue, right?</p> <p>6 A. I'm just -- I'm pausing because of</p> <p>7 the phrase "any such reaction" can you repeat</p> <p>8 your question just so I can understand --</p> <p>9 Q. You know what. I will rephrase it</p> <p>10 this way. I will take that question back --</p> <p>11 A. Okay.</p> <p>12 Q. What you are saying is in this</p> <p>13 paragraph that President Brown made the false</p> <p>14 allegation that at the time of the fashion</p> <p>15 show when Mr. Wang's fashions were coming out</p> <p>16 with those accessories that she and the board</p> <p>17 of trustees and her cabinet believed it to be</p> <p>18 racist when in fact at the time they did not</p> <p>19 believe it to be racist; is that accurate?</p> <p>20 A. I can't speak to belief. I think</p> <p>21 that the word that's used in her statement,</p> <p>22 which I believe if you scroll up and we could</p> <p>23 even look at, is "recognized," not believed.</p> <p>24 Q. Okay, "recognized."</p> <p>25 But either way, you believed that</p>

<p style="text-align: right;">109</p> <p>1 DAVIS, Ph.D.</p> <p>2 that statement was false -- knowingly false,</p> <p>3 correct?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Okay.</p> <p>6 In Paragraph 51 you also say,</p> <p>7 "Dr. Brown's statement that F.I.T. was</p> <p>8 commissioning an independent investigation to</p> <p>9 uncover how and why Dr. Davis and Professor</p> <p>10 Farmer failed to recognize or anticipate the</p> <p>11 racist references and cultural</p> <p>12 insensitivities that were obvious to almost</p> <p>13 everybody else was designed to show that she,</p> <p>14 Dr. Brown, was taking affirmative steps to</p> <p>15 prevent more racist events in the future.</p> <p>16 The reason given for that</p> <p>17 investigation, however, was predicated on a</p> <p>18 lie that Dr. Davis had been involved in the</p> <p>19 selection or approval of the accessories or</p> <p>20 the pressuring of the models to wear them</p> <p>21 when F.I.T. already knew that Dr. Davis had</p> <p>22 no such role, authority or responsibility. "</p> <p>23 Is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. By doing this, by making that</p>	<p style="text-align: right;">111</p> <p>1 DAVIS, Ph.D.</p> <p>2 So, how do you see the two as being</p> <p>3 different?</p> <p>4 A. Well, I think that the fashion show</p> <p>5 was an event and that the intent of this</p> <p>6 language is -- the word "racist events" is</p> <p>7 related to that, racist activities, racist --</p> <p>8 events it says what it says.</p> <p>9 Q. Okay.</p> <p>10 So, by trying to protect against</p> <p>11 future racist events does not protect against</p> <p>12 racism; is that what you are saying?</p> <p>13 A. I think that the problem of racism</p> <p>14 is arguably a much larger issue than the</p> <p>15 issue of a racist event.</p> <p>16 Q. If that's your opinion, that's your</p> <p>17 opinion --</p> <p>18 A. It is.</p> <p>19 Q. Okay.</p> <p>20 MR. SELLS: Please go to</p> <p>21 Paragraph 54.</p> <p>22 Q. There is another statement that you</p> <p>23 talk about, right, this is in addition to the</p> <p>24 February 21st, statement --</p> <p>25 A. That's right --</p>
<p style="text-align: right;">110</p> <p>1 DAVIS, Ph.D.</p> <p>2 allegation you're saying that the President</p> <p>3 of F.I.T., and those that work for F.I.T. in</p> <p>4 helping her to craft this lie, did so to give</p> <p>5 the belief that Dr. Brown and F.I.T. were</p> <p>6 trying to prevent future racist events from</p> <p>7 occurring; is that right?</p> <p>8 A. No, it was designed to show -- I'm</p> <p>9 reading from Paragraph 51. "Her statement</p> <p>10 was designed to show that she, Dr. Brown, was</p> <p>11 taking affirmative steps --" not that she was</p> <p>12 doing it, but that she was showing it.</p> <p>13 Q. Right.</p> <p>14 So she was making it -- given the</p> <p>15 false impression based upon a lie, right?</p> <p>16 A. I -- I stand by the language in the</p> <p>17 complaint.</p> <p>18 Q. Got it.</p> <p>19 And so F.I.T. would lie to show that</p> <p>20 it is taking steps to prevent racism when in</p> <p>21 fact they are not, right?</p> <p>22 A. Again, sir, the point in Paragraph</p> <p>23 51 is specific about racist events not</p> <p>24 racism.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">112</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- I'll get to the March 5th</p> <p>3 statement where you allege "Dr. Brown</p> <p>4 escalated her rhetoric in an e-mail to all</p> <p>5 F.I.T. employees and she wrote, 'Since the</p> <p>6 MFA fashion show, we, the F.I.T. community,</p> <p>7 have been going through a very painful</p> <p>8 period. What happened that evening was</p> <p>9 appalling and indefensible; and as president</p> <p>10 of this college, I was angry and embarrassed</p> <p>11 that we allowed F.I.T. to be represented in</p> <p>12 this way.</p> <p>13 Following the show, I immediately</p> <p>14 commissioned an independent investigation,</p> <p>15 which is ongoing. People who know me, know I</p> <p>16 often say that you cannot legislate good</p> <p>17 behavior. As someone who has felt the sting</p> <p>18 of racism, I am constantly reminded of it's</p> <p>19 intractability and it is never less than</p> <p>20 shocking.</p> <p>21 Our commitment going forward must be</p> <p>22 constant and real and authentic enough to</p> <p>23 transform our pain into the kind of</p> <p>24 meaningful change that characterizes the best</p> <p>25 of us.'</p>

<p style="text-align: right;">113</p> <p>1 DAVIS, Ph.D.</p> <p>2 These lies added to her false</p> <p>3 narrative amplifying her previous defamation</p> <p>4 of Dr. Davis."</p> <p>5 Did you write or did you swear to</p> <p>6 that?</p> <p>7 A. I swore to that.</p> <p>8 Q. Then you write in Paragraph 55, "The</p> <p>9 fact that these lies came from the black</p> <p>10 president of Fashion Institute of Technology</p> <p>11 made them especially believable and damaging</p> <p>12 because they were made by someone with</p> <p>13 authority in the areas of racism as someone</p> <p>14 who has felt the sting of racism. Fashion</p> <p>15 and academic administration including the</p> <p>16 duties of an academic dean. They were also</p> <p>17 especially believable and damaging because</p> <p>18 the average person would assume the president</p> <p>19 of F.I.T. knew facts about the incident that</p> <p>20 they did not."</p> <p>21 Did you swear that?</p> <p>22 A. I did.</p> <p>23 Q. Then you write in Paragraph 56,</p> <p>24 "Moreover, Dr. Brown made these statements in</p> <p>25 her capacity as president of F.I.T., speaking</p>	<p style="text-align: right;">115</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. And so if F.I.T. can throw you under</p> <p>3 the bus, use you as a scapegoat to get out of</p> <p>4 allegations that it acted in a racist manner,</p> <p>5 they could do that to anybody, right?</p> <p>6 MR. DRANOFF: Object to the</p> <p>7 form.</p> <p>8 A. I can't speculate about what they</p> <p>9 could do regarding other people. I speak to</p> <p>10 what they did to me.</p> <p>11 Q. What they did to you and what they</p> <p>12 did to Kyle Farmer, correct?</p> <p>13 A. My suit does not involve Kyle</p> <p>14 Farmer. It is -- I speak to what they did to</p> <p>15 me.</p> <p>16 Q. Got it.</p> <p>17 So what were the reasons that they</p> <p>18 gave for terminating you?</p> <p>19 A. They produced a letter -- I was</p> <p>20 given a letter -- e-mailed a letter actually</p> <p>21 that had several points that were used for</p> <p>22 justification for my termination. Would you</p> <p>23 like me to summarize what those are?</p> <p>24 Q. Yes, I would. Tell me. I want to</p> <p>25 know the reasons that they gave you.</p>
<p style="text-align: right;">114</p> <p>1 DAVIS, Ph.D.</p> <p>2 on behalf of F.I.T. and representing her</p> <p>3 statements to the public as reflecting the</p> <p>4 conclusions, determinations, factfinding and</p> <p>5 decisions of F.I.T. She was at all times</p> <p>6 authorized to speak on behalf of F.I.T. and</p> <p>7 was within the scope of her authority and</p> <p>8 employment when she made these statements.</p> <p>9 As such, her false statements, innuendos,</p> <p>10 insinuations, remarks and implied criticisms</p> <p>11 regarding Dr. Davis are attributable to and</p> <p>12 indistinguishable from those events from</p> <p>13 those of F.I.T."</p> <p>14 Did you swear to that?</p> <p>15 A. I did.</p> <p>16 MR. SELLS: We can take that</p> <p>17 down.</p> <p>18 Q. Now, Dr. Davis, you have given us</p> <p>19 your qualifications, your experience. You</p> <p>20 have held a lot of positions that are high up</p> <p>21 in academia and elsewhere; would you agree</p> <p>22 with that?</p> <p>23 A. I have been a department chair and a</p> <p>24 dean, and I suppose that's -- that is high</p> <p>25 up.</p>	<p style="text-align: right;">116</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Well, I might not recall all of the</p> <p>3 specifics. One, there were two things</p> <p>4 related to the MFA show, neither of which had</p> <p>5 to do with anything with the accessories</p> <p>6 specifically or any allegations of racism.</p> <p>7 One of them was that I -- when I overheard</p> <p>8 that communications specialist, Alex Mann,</p> <p>9 report to her boss, VP Keane, after the show</p> <p>10 that she felt there might be some blow back</p> <p>11 about the show, that I failed to act on that.</p> <p>12 A second thing connected to the show</p> <p>13 was the meeting that we have already</p> <p>14 discussed with the students, the MFA</p> <p>15 students, following the fashion show.</p> <p>16 The other points did not have</p> <p>17 anything to do with the fashion show. They</p> <p>18 had to do with my administrative duties; and</p> <p>19 one point was -- had to do with the</p> <p>20 admissions of Chinese students to the MFA</p> <p>21 program. They were -- I don't remember the</p> <p>22 specifics of those, but they were</p> <p>23 administrative, related to my administrative</p> <p>24 responsibilities.</p> <p>25 Q. Can you go through the rest? So</p>



<p style="text-align: right;">117</p> <p>1 DAVIS, Ph.D.</p> <p>2 admission of Chinese students; what about</p> <p>3 that?</p> <p>4 A. There were questions or -- I mean, I</p> <p>5 don't know about questions but one of the</p> <p>6 reasons given for my termination was that too</p> <p>7 many Chinese students were admitted to the</p> <p>8 MFA fashion design program, and I failed to</p> <p>9 do anything about that.</p> <p>10 Q. Anything else regarding</p> <p>11 administrative duties?</p> <p>12 A. I don't -- I don't recall the</p> <p>13 specifics.</p> <p>14 Q. Okay. With regard to the statement</p> <p>15 that part of the reason for your termination</p> <p>16 had to do with the meeting with students, can</p> <p>17 you describe that further? What did they say</p> <p>18 about it?</p> <p>19 A. It was just -- it was also not</p> <p>20 specific. It -- it just said that I chose to</p> <p>21 meet -- I don't want to paraphrase. I don't</p> <p>22 recall what it says.</p> <p>23 Q. All right.</p> <p>24 When was the last time you saw this</p> <p>25 letter?</p>	<p style="text-align: right;">119</p> <p>1 DAVIS, Ph.D.</p> <p>2 I tell you what. If you want to talk</p> <p>3 about it off the record a little bit,</p> <p>4 I would be happy to.</p> <p>5 MR. SELLS: Okay. Okay.</p> <p>6 MR. DRANOFF: All right.</p> <p>7 MR. SELLS: Got it. All right.</p> <p>8 Q. Now in terms of the suggestion that</p> <p>9 you were terminated in part because you</p> <p>10 overheard a statement that was made after --</p> <p>11 right after the fashion show, and I think you</p> <p>12 were talking about the word blow back,</p> <p>13 something like that, that you failed to act.</p> <p>14 Can you be more specific about that</p> <p>15 allegation? I mean, what was it that they</p> <p>16 said you heard, and then just tell us is it</p> <p>17 true that you heard something of that nature</p> <p>18 or not?</p> <p>19 A. I was -- first of all, I don't</p> <p>20 recall the specifics. I was standing after</p> <p>21 the show with Vice President Keane and Alex</p> <p>22 Mann and they were talking. I was not part</p> <p>23 of their group. I overheard Alex Mann say to</p> <p>24 Loretta Keane that there might be -- I don't</p> <p>25 remember the word she used -- problems</p>
<p style="text-align: right;">118</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall.</p> <p>3 Q. Well, you know it came up just</p> <p>4 yesterday in VP Glass's testimony, right?</p> <p>5 A. I don't recall --</p> <p>6 Q. You were --</p> <p>7 A. I'm sorry. I don't recall that we</p> <p>8 looked at it though.</p> <p>9 Q. No, we didn't. We didn't look at</p> <p>10 it.</p> <p>11 A. No, that is why I don't remember the</p> <p>12 specifics.</p> <p>13 Q. Do you still have the letter?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 MR. SELLS: I call for the</p> <p>17 production of the letter.</p> <p>18 MR. DRANOFF: Standard, just</p> <p>19 put it in writing.</p> <p>20 MR. SELLS: I got it, but is it</p> <p>21 possible that we could get a copy of</p> <p>22 this letter for the afternoon so that</p> <p>23 I could go through it? I just don't</p> <p>24 want to have to --</p> <p>25 MR. DRANOFF: No, I get that.</p>	<p style="text-align: right;">120</p> <p>1 DAVIS, Ph.D.</p> <p>2 related to the press following the show.</p> <p>3 So I assumed these were two people</p> <p>4 from the Communications Department, one</p> <p>5 senior administrator from the Communications</p> <p>6 Department, this was their business.</p> <p>7 Q. So, when you heard this discussion</p> <p>8 about problems related to the press following</p> <p>9 the show, did you know they were talking</p> <p>10 about the accessories and how they could be</p> <p>11 characterized as racially insensitivity?</p> <p>12 A. I don't believe there was anything</p> <p>13 specific.</p> <p>14 Q. And so, when you saw -- and you saw</p> <p>15 the models walking with these accessories,</p> <p>16 right? The big lips and the big ears, you</p> <p>17 saw that --</p> <p>18 A. Yes.</p> <p>19 Q. -- as it happened, right?</p> <p>20 A. Yes.</p> <p>21 Q. And not a bone in your body or not a</p> <p>22 thought in your head came across to you as,</p> <p>23 Wow, that's -- that could be interpreted as</p> <p>24 racist; is that right?</p> <p>25 A. I thought that the looks -- the</p>

<p style="text-align: right;">121</p> <p>1 DAVIS, Ph.D.</p> <p>2 accessories were ugly. I thought that they</p> <p>3 detracted from the beauty of Jung Ki's</p> <p>4 designs. I thought they were unnecessary.</p> <p>5 They did not come across to me as racist.</p> <p>6 Q. Not even a -- you didn't even have</p> <p>7 an inkling like, Whoa, it is possibly racist</p> <p>8 or anything like that? To you it was just,</p> <p>9 these are ugly and unnecessary; is that</p> <p>10 correct?</p> <p>11 A. That is what I recall.</p> <p>12 Q. Oh. That's not going to be a good</p> <p>13 answer on this transcript. When you say,</p> <p>14 "that's what I recall"; are you talking about</p> <p>15 my question, which was that you didn't see</p> <p>16 this as being possibly racist at all --</p> <p>17 A. I don't believe that was your exact</p> <p>18 question. My -- my comment was -- or my</p> <p>19 answer related to the fact that this was a</p> <p>20 show featuring 10 different designers showing</p> <p>21 multiple looks; so there was -- I believe</p> <p>22 that show lasted over an hour and that each</p> <p>23 student was presenting a different kind of</p> <p>24 concept; so we saw a lot of things come down</p> <p>25 the runway. I don't recall thinking at the</p>	<p style="text-align: right;">123</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, a lunch recess was</p> <p>3 taken 12:53; after which, the</p> <p>4 proceedings continued at 2:00 p.m. as</p> <p>5 follows.)</p> <p>6 MR. SELLS: Back on the record.</p> <p>7 Q. So, Ms. Davis, the people that</p> <p>8 reported to you and you gave us their names</p> <p>9 before the break. Can you just tell us when</p> <p>10 you describe their -- when you talk about</p> <p>11 their names; can you just tell us what race</p> <p>12 they are?</p> <p>13 A. Certainly. Umlta Alsop, is black;</p> <p>14 Marilyn Barton, is white; Marjorie Phillips,</p> <p>15 is black; Anton Baptiste, is black; Carolyn</p> <p>16 DeSantis, is white.</p> <p>17 Q. Okay.</p> <p>18 And what time in 2012 did you take</p> <p>19 over?</p> <p>20 A. I believe I started on July 1st.</p> <p>21 Q. Of the people that worked directly</p> <p>22 for you and reported to you, were any of them</p> <p>23 union members?</p> <p>24 A. I believe all of them were union</p> <p>25 members.</p>
<p style="text-align: right;">122</p> <p>1 DAVIS, Ph.D.</p> <p>2 time that Jung Ki's accessories were racist.</p> <p>3 Q. How do you know Marjorie Phillips?</p> <p>4 A. I met Marjorie when I came to work</p> <p>5 in the School of Graduate Studies in 2012.</p> <p>6 Q. All right.</p> <p>7 When you came to the School of</p> <p>8 Graduate Studies in 2012, who were your</p> <p>9 direct reports?</p> <p>10 A. At that time Marilyn Barton, Umlta</p> <p>11 Alsop, Marjorie Phillips and Anton Baptiste,</p> <p>12 Carol DeSantis.</p> <p>13 MR. DRANOFF: Derek, and</p> <p>14 everyone else, it seems, Derek, you</p> <p>15 might have moved onto a different</p> <p>16 topic. Do you think maybe now we</p> <p>17 should take a half hour for some chow</p> <p>18 and come back after lunch?</p> <p>19 MR. SELLS: Yes, that's fine.</p> <p>20 We can break for lunch now.</p> <p>21 Eric, did you want to talk off</p> <p>22 the record --</p> <p>23 MR. DRANOFF: Yes.</p> <p>24 MR. SELL: We can come back at</p> <p>25 1:00 p.m.</p>	<p style="text-align: right;">124</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 And what was your understanding of</p> <p>4 how the employees who work for you as part of</p> <p>5 the union; how was it they could get raises</p> <p>6 and/or promotions?</p> <p>7 A. There is a process that is described</p> <p>8 and articulated in the collective bargaining</p> <p>9 agreement that governs that.</p> <p>10 Q. Well, what's your understanding; how</p> <p>11 does it work?</p> <p>12 A. The various components to it</p> <p>13 depending on what's happening; whether it is</p> <p>14 a re-evaluation of a staff member, whether it</p> <p>15 is a reclassification of a staff member,</p> <p>16 whether it's a hiring of the staff member. I</p> <p>17 believe that there are slightly different</p> <p>18 procedures that govern those different</p> <p>19 categories.</p> <p>20 Q. Okay.</p> <p>21 As supervisor of them, did you have</p> <p>22 any role in making sure or ensuring that a</p> <p>23 raise could be given to people that are below</p> <p>24 you?</p> <p>25 A. I --</p>



<p style="text-align: right;">125</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Object to the</p> <p>3 form and it is a clarity thing,</p> <p>4 Derek.</p> <p>5 MR. SELLS: All right. I will</p> <p>6 rephrase.</p> <p>7 MR. DRANOFF: Yes.</p> <p>8 Q. So, with regard to -- we'll take one</p> <p>9 at a time. With regard to Marjorie Phillips,</p> <p>10 did you have an understanding that in order</p> <p>11 for her to get a raise or a promotion that</p> <p>12 you needed to do something?</p> <p>13 A. I could trigger the request for</p> <p>14 consideration of re-evaluation of a position.</p> <p>15 I trigger that -- I trigger that process by</p> <p>16 writing a request to the vice president of</p> <p>17 Academic Affairs; so he is the first or</p> <p>18 whoever is in that seat would be the first up</p> <p>19 to consideration of whether or not it was</p> <p>20 possible.</p> <p>21 Q. Got it --</p> <p>22 MR. DRANOFF: Just again,</p> <p>23 further on my clarification and,</p> <p>24 Derek, it is only because I don't</p> <p>25 know, just being accurate. Just so</p>	<p style="text-align: right;">127</p> <p>1 DAVIS, Ph.D.</p> <p>2 Affairs.</p> <p>3 Q. Got it.</p> <p>4 Did you ever do that for Anton</p> <p>5 Baptiste --</p> <p>6 A. I did not.</p> <p>7 Q. You got to let me finish.</p> <p>8 So you never tried to give Anton</p> <p>9 Baptiste a raise or a promotion; is that</p> <p>10 right?</p> <p>11 MR. DRANOFF: Object to the</p> <p>12 form.</p> <p>13 A. I did not send a letter to the VP</p> <p>14 with that request.</p> <p>15 Q. Okay.</p> <p>16 Umilta Alsop, while you were in your</p> <p>17 position as dean, what was your understanding</p> <p>18 of how she could get a raise and/or a</p> <p>19 promotion?</p> <p>20 A. The same process, as I have</p> <p>21 described.</p> <p>22 Q. Did you ever do that for Umilta</p> <p>23 Alsop? Did you --</p> <p>24 A. I did not -- sorry. Sorry --</p> <p>25 Q. -- ever try to trigger --</p>
<p style="text-align: right;">126</p> <p>1 DAVIS, Ph.D.</p> <p>2 we are all clear, I would suspect</p> <p>3 that perhaps the CBA has its own</p> <p>4 provisions for incremental raises</p> <p>5 irrespective of any other process.</p> <p>6 That is why I'm making that</p> <p>7 clarification.</p> <p>8 MR. SELLS: All right. I'm</p> <p>9 just asking about her understanding</p> <p>10 of it.</p> <p>11 MR. DRANOFF: Okay.</p> <p>12 Q. So, Dr. Davis, while Ms. Phillips</p> <p>13 was under your supervision, did you ever</p> <p>14 trigger that for her? Did you ever make a</p> <p>15 request that she be given a change in title</p> <p>16 or a raise?</p> <p>17 A. I did not.</p> <p>18 Q. Okay.</p> <p>19 Anton Baptiste, what was your</p> <p>20 understanding of how you could get him a</p> <p>21 raise and/or promotion?</p> <p>22 A. Same process.</p> <p>23 Q. Same process --</p> <p>24 A. I would need to request that -- make</p> <p>25 the initial request to the VP for Academic</p>	<p style="text-align: right;">128</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Sorry.</p> <p>3 Q. You didn't?</p> <p>4 MR. DRANOFF: Object to the</p> <p>5 form.</p> <p>6 A. I did not.</p> <p>7 Q. Got it.</p> <p>8 Marilyn Barton, what was yours</p> <p>9 understanding of how you could assist her in</p> <p>10 getting a raise or a promotion?</p> <p>11 A. My consideration in Marilyn's case</p> <p>12 wasn't about whether I could get her a raise</p> <p>13 or a promotion.</p> <p>14 Q. Did you understand my question?</p> <p>15 A. I did. I answered your question.</p> <p>16 Q. Okay.</p> <p>17 So my question was, What was your</p> <p>18 understanding of how you could assist her in</p> <p>19 getting a raise or a promotion?</p> <p>20 A. Marilyn, as a union employee, in</p> <p>21 matters of a raise or promotion would go</p> <p>22 through the same process -- the same process</p> <p>23 would apply.</p> <p>24 Q. Got it.</p> <p>25 And did you ever write a letter for</p>

<p style="text-align: right;">129</p> <p>1 DAVIS, Ph.D.</p> <p>2 her to get a raise or a promotion?</p> <p>3 A. I wrote a letter to get a</p> <p>4 re-evaluation of her position.</p> <p>5 Q. Okay.</p> <p>6 When did you write this letter?</p> <p>7 A. I believe some time in 2017.</p> <p>8 Q. 2017?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And was there a reconsideration?</p> <p>11 A. Yes, there was.</p> <p>12 Q. When did that happen?</p> <p>13 A. After --- I believe this was in the</p> <p>14 fall of 2017. After I submitted my</p> <p>15 recommendation, it was out of my hands. I</p> <p>16 actually don't know when the re- --- when the</p> <p>17 final decision was made about Marilyn's</p> <p>18 position. I don't recall.</p> <p>19 Q. And why wouldn't you know?</p> <p>20 A. I would have been notified; but I</p> <p>21 would not have been involved in the final</p> <p>22 process.</p> <p>23 MR. SELLS: Okay. I call for</p> <p>24 the production of Marilyn Barton's</p> <p>25 raise request. And the decision</p>	<p style="text-align: right;">131</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Why didn't you do it for Ms. DeSantis?</p> <p>3 A. I don't believe that there was a</p> <p>4 reason. I don't believe there was a reason</p> <p>5 to make a request.</p> <p>6 Q. All right.</p> <p>7 And why didn't you do that for</p> <p>8 Ms. Alsop?</p> <p>9 A. I don't believe there was a reason</p> <p>10 to make a request.</p> <p>11 Q. And Mr. Baptiste, why didn't you do</p> <p>12 it for him?</p> <p>13 A. I don't believe there was a reason</p> <p>14 to make a request.</p> <p>15 Q. And Ms. Phillips, why didn't you do</p> <p>16 it for her?</p> <p>17 A. I don't believe there was a reason</p> <p>18 to make a request.</p> <p>19 Q. Okay.</p> <p>20 Marilyn Barton, why did you do it</p> <p>21 for her?</p> <p>22 A. Marilyn Barton was technically</p> <p>23 working out of classification. She had job</p> <p>24 duties that were not reflected in her</p> <p>25 position description; and so, per the</p>
<p style="text-align: right;">130</p> <p>1 DAVIS, Ph.D.</p> <p>2 associated with her getting the ---</p> <p>3 MR. DRANOFF: You're making</p> <p>4 that request of all parties, Derek?</p> <p>5 MR. SELLS: No, of F.I.T. and</p> <p>6 Ms. Barton, to the extent that she</p> <p>7 might have it; but we'll follow it up</p> <p>8 with writing.</p> <p>9 I think we asked yesterday as</p> <p>10 well for the same information.</p> <p>11 Q. Carol DeSantis, how long did she</p> <p>12 work for you?</p> <p>13 A. She was there when I arrived in</p> <p>14 2012, and she retired before I left F.I.T.;</p> <p>15 so I'm not sure of what date she retired.</p> <p>16 Q. Okay.</p> <p>17 What is your understanding of how</p> <p>18 you could assist her in getting a raise</p> <p>19 and/or promotion?</p> <p>20 A. I -- the same process would apply.</p> <p>21 I would write a letter making a request to</p> <p>22 the VP of Academic Affairs.</p> <p>23 Q. All right.</p> <p>24 And did you do that for Ms. DeSantis?</p> <p>25 A. I did not.</p>	<p style="text-align: right;">132</p> <p>1 DAVIS, Ph.D.</p> <p>2 collective bargaining agreement, that</p> <p>3 situation needed to be remedied.</p> <p>4 Q. And what duties did she have that</p> <p>5 fell out of her job description?</p> <p>6 A. Again, as I recall, Marilyn was</p> <p>7 doing additional work for the school as a</p> <p>8 whole; handling administrative matters for</p> <p>9 the school as a whole, assisting me directly.</p> <p>10 I would have to look at her position -- at</p> <p>11 the documents related to this to be certain.</p> <p>12 Q. When you talk about assisting the</p> <p>13 school as a whole, for what? Like what?</p> <p>14 What did she do to assist the school as</p> <p>15 whole?</p> <p>16 A. Well, what I'm differentiating there</p> <p>17 is that other assistants -- other</p> <p>18 administrative assists were tasked with</p> <p>19 assisting departments -- specific</p> <p>20 departments. Whereas Marilyn had duties to</p> <p>21 assist the school more generally in it's</p> <p>22 administrative needs.</p> <p>23 Q. I see.</p> <p>24 So are you saying that Ms. Phillips</p> <p>25 wasn't handling responsibilities that were</p>

<p style="text-align: right;">133</p> <p>1 DAVIS, Ph.D.</p> <p>2 outside of her job description?</p> <p>3 A. I don't believe that she was.</p> <p>4 Q. Why don't you believe that she was?</p> <p>5 A. Because I don't believe that she was</p> <p>6 handling duties that were outside of her job</p> <p>7 description.</p> <p>8 Q. Well, what was her job description?</p> <p>9 A. We would need to look at that</p> <p>10 document.</p> <p>11 Q. Well, why would we need to look at</p> <p>12 it?</p> <p>13 A. Because I don't recall.</p> <p>14 Q. Well, you don't recall. Then how</p> <p>15 could you say with certainty that you don't</p> <p>16 believe she was working out of her job</p> <p>17 description?</p> <p>18 A. Because I said the word "believe."</p> <p>19 I don't believe she was working out of her</p> <p>20 job description. I would need to see that</p> <p>21 job description and re-visit the facts in</p> <p>22 order to make a definitive statement about</p> <p>23 that.</p> <p>24 Q. Okay.</p> <p>25 So, when you say you "don't believe"</p>	<p style="text-align: right;">135</p> <p>1 DAVIS, Ph.D.</p> <p>2 but it was probably 2014 or 2015, I'm</p> <p>3 guessing, when that program was closed under</p> <p>4 a provision of a contract called</p> <p>5 Retrenchment; and so that program support</p> <p>6 that Marjorie had been providing, she no</p> <p>7 longer needed to provide because the program</p> <p>8 no longer existed.</p> <p>9 Q. Got it.</p> <p>10 So what you're saying is that</p> <p>11 Ms. Phillips, for two years, worked outside</p> <p>12 of her job description assisting this other</p> <p>13 program; but you didn't see fit to move that</p> <p>14 she be reclassified during that two year</p> <p>15 period --</p> <p>16 A. No.</p> <p>17 Q. -- is that what I understand you to</p> <p>18 say?</p> <p>19 A. No, that is -- that is not correct.</p> <p>20 Q. No?</p> <p>21 A. When I first arrived Marjorie was</p> <p>22 supporting two departments. One department</p> <p>23 was closed under the F.I.T. provision of</p> <p>24 Retrenchment and Marjorie was not working</p> <p>25 outside of the stipulated job description,</p>
<p style="text-align: right;">134</p> <p>1 DAVIS, Ph.D.</p> <p>2 something, it has to be based on fact and</p> <p>3 you, ma'am, have no recollection of what her</p> <p>4 job duties were?</p> <p>5 A. Oh, that is --</p> <p>6 Q. Isn't that true?</p> <p>7 A. No, that is not true.</p> <p>8 Q. Okay.</p> <p>9 So what were her job duties?</p> <p>10 A. I cannot re- -- recite the full list</p> <p>11 of her job duties without a document in front</p> <p>12 of me; but one of her primary duties was</p> <p>13 serving as the administrative assistant to</p> <p>14 the Fashion and Textile Studies Department.</p> <p>15 So she had specific tasks related to that</p> <p>16 department, it's faculty and it's students as</p> <p>17 well as it's programs and events.</p> <p>18 Q. Okay.</p> <p>19 She didn't do anything outside of</p> <p>20 that?</p> <p>21 A. Well, there was an earlier time in</p> <p>22 my tenure at F.I.T. when she was assisting a</p> <p>23 second program. It was the Sustainable</p> <p>24 Interior Environments Program, and that</p> <p>25 program -- I'm not going to recall the year,</p>	<p style="text-align: right;">136</p> <p>1 DAVIS, Ph.D.</p> <p>2 and I would need to see a copy of the job</p> <p>3 description in order to explain exactly why</p> <p>4 to you.</p> <p>5 Q. So again, you can't tell me why; but</p> <p>6 you are just saying I'll remember but I need</p> <p>7 to see the document?</p> <p>8 A. I --</p> <p>9 Q. Don't you see what you're doing --</p> <p>10 MR. DRANOFF: Derek --</p> <p>11 Q. -- Dr. Davis? Don't you see what</p> <p>12 you're doing?</p> <p>13 MR. DRANOFF: Derek, objection.</p> <p>14 MR. SELLS: Okay.</p> <p>15 Q. Don't you see what you're doing,</p> <p>16 Dr. Davis?</p> <p>17 A. I am telling you the truth that I</p> <p>18 need to see the position description in order</p> <p>19 to make a statement about this.</p> <p>20 Q. But you already made a statement.</p> <p>21 You already made a statement. You just said</p> <p>22 that for two years Ms. Phillips was</p> <p>23 supporting two programs, but that she wasn't</p> <p>24 working out of her job description --</p> <p>25 A. Her job description --</p>

<p style="text-align: right;">137</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- but then you said but I need to</p> <p>3 see the job description in order to tell you</p> <p>4 why she wasn't working out of her title --</p> <p>5 MR. DRANOFF: Objection.</p> <p>6 Objection.</p> <p>7 Q. -- isn't that what you are saying?</p> <p>8 A. No --</p> <p>9 Q. So --</p> <p>10 A. I think --</p> <p>11 Q. Tell me why --</p> <p>12 A. I think --</p> <p>13 Q. -- tell me why Ms. Phillips was</p> <p>14 working within her job description for the</p> <p>15 two years that she was assisting the two</p> <p>16 different programs. Tell me why?</p> <p>17 A. Because her job description did not</p> <p>18 relate specifically to either program. The</p> <p>19 job description was written for all of the</p> <p>20 administrative staff of the Graduate School</p> <p>21 does not specify the programs to which they</p> <p>22 are assigned, at least during my tenure it</p> <p>23 did not. It described --</p> <p>24 Q. Okay --</p> <p>25 A. Derek, excuse me --</p>	<p style="text-align: right;">139</p> <p>1 DAVIS, Ph.D.</p> <p>2 retired, it was Marjorie Phillips who took</p> <p>3 over Ms. DeSantis' job responsibilities;</p> <p>4 isn't that right?</p> <p>5 A. She did not take over all of --</p> <p>6 Q. I didn't see "all" --</p> <p>7 A. She did not take over --</p> <p>8 Q. She took over some of her</p> <p>9 responsibility, right?</p> <p>10 A. Can you be more specific, please.</p> <p>11 Q. Oh. Like what do you want me to be</p> <p>12 more specific about?</p> <p>13 Did Ms. Phillips take over some of</p> <p>14 Ms. DeSantis' job responsibilities when she</p> <p>15 retired?</p> <p>16 A. I would like to understand better.</p> <p>17 I would like a clarification on what job</p> <p>18 responsibilities you are referring to.</p> <p>19 Q. Well, what did Ms. DeSantis do?</p> <p>20 A. Mrs. DeSantis, her primary</p> <p>21 responsibility was handling admissions.</p> <p>22 Q. Okay.</p> <p>23 And did Ms. Phillips have some</p> <p>24 responsibilities that Ms. DeSantis had?</p> <p>25 A. I can't recall.</p>
<p style="text-align: right;">138</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: Let her finish.</p> <p>3 MR. SELLS: All right. Go</p> <p>4 ahead.</p> <p>5 A. It describes more generic duties;</p> <p>6 and in terms of support of departments,</p> <p>7 faculty and students, that's what I -- that's</p> <p>8 what I would need to have in front of me in</p> <p>9 order to refresh my memory.</p> <p>10 Q. Did everybody who worked for you,</p> <p>11 did they have a job description?</p> <p>12 A. Everyone -- everyone who worked for</p> <p>13 me had a job description. Many of those job</p> <p>14 descriptions had not been updated for a long</p> <p>15 time when I arrived, and part of what --</p> <p>16 another component of what was happening in</p> <p>17 the Graduate School was that there was growth</p> <p>18 and the addition of new staff members and new</p> <p>19 faculty members; so new job descriptions were</p> <p>20 written for those people.</p> <p>21 Q. All right.</p> <p>22 So one of the people that had a job</p> <p>23 description was Carol DeSantis, right?</p> <p>24 A. Yes.</p> <p>25 Q. Yes. And when Carol DeSantis</p>	<p style="text-align: right;">140</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Did you have something called an</p> <p>3 illustration of the Graduate Program?</p> <p>4 A. Yes, we do.</p> <p>5 Q. What is that?</p> <p>6 A. That is the Master of Fine Arts</p> <p>7 Program.</p> <p>8 Q. Did Ms. Phillips take over the</p> <p>9 illustration of the Graduate Program?</p> <p>10 A. Ms. DeSantis when -- I'm sorry.</p> <p>11 Ms. Phillips, when Ms. DeSantis retired and</p> <p>12 the Sustainable Interior Environments Program</p> <p>13 was closed, I believe she did pick up the</p> <p>14 duties for the Illustration Department.</p> <p>15 Q. Oh. And that was not in</p> <p>16 Ms. Phillips job description, was it?</p> <p>17 A. Yes, it was; because again,</p> <p>18 Ms. Phillips's job description was not tied</p> <p>19 to any single department. It's a generic</p> <p>20 description of support for the school and the</p> <p>21 department's of the school.</p> <p>22 Q. I see.</p> <p>23 So Ms. DeSantis was given the</p> <p>24 specific job responsibility of illustration</p> <p>25 for the Graduate School Program. That was</p>

<p style="text-align: right;">141</p> <p>1 DAVIS, Ph.D.</p> <p>2 very specific, right?</p> <p>3 A. No.</p> <p>4 Q. Oh, no -- okay --</p> <p>5 A. Ms. DeSantis' job description would</p> <p>6 not have included a reference to the</p> <p>7 Illustration Department.</p> <p>8 Q. So, she was working out of her job</p> <p>9 description?</p> <p>10 A. No, sir, that's not how the job</p> <p>11 descriptions in the school of graduate</p> <p>12 studies worked. They were not specific to</p> <p>13 academic departments. That changed during my</p> <p>14 tenure.</p> <p>15 Q. Oh, it did?</p> <p>16 A. It did.</p> <p>17 Q. Oh, when did that happen?</p> <p>18 A. That happened in the context of the</p> <p>19 effort to build the school and to add staff</p> <p>20 to assist the -- specifically the master</p> <p>21 study programs and the Master of Fine Arts</p> <p>22 Programs.</p> <p>23 MR. SELLS: Okay. I'm calling</p> <p>24 for the production of job</p> <p>25 descriptions that were given to each</p>	<p style="text-align: right;">143</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. There was.</p> <p>3 Q. Okay.</p> <p>4 So when Ms. Phillips was given</p> <p>5 responsibilities that Ms. DeSantis had, were</p> <p>6 those responsibilities in the previous</p> <p>7 administration's job description or was it</p> <p>8 from yours?</p> <p>9 A. No, they were -- they were from</p> <p>10 Dr. Arbuckle.</p> <p>11 Q. Got it.</p> <p>12 Just so I'm clear. So, when</p> <p>13 Ms. Phillips took over Dr. Arbuckle's set of</p> <p>14 descriptions that were given to Ms. DeSantis,</p> <p>15 they were not the same description of job</p> <p>16 that Ms. Phillips had, correct?</p> <p>17 A. No, that is not correct --</p> <p>18 Q. They had the same job description,</p> <p>19 exact same job description; is that what you</p> <p>20 are saying?</p> <p>21 A. I'm not sure about the question.</p> <p>22 Who had the same job description?</p> <p>23 Q. Ms. Phillips and Mrs. DeSantis.</p> <p>24 A. They did not probably. I would have</p> <p>25 to, again, look and the reason for that would</p>
<p style="text-align: right;">142</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the people that worked under</p> <p>3 Dr. Davis.</p> <p>4 Q. Each of the descriptions were</p> <p>5 written out, correct?</p> <p>6 A. So the descriptions for staff that I</p> <p>7 mentioned -- Marjorie Phillips, Marilyn</p> <p>8 Barton, Unilta Alsop, Anton Baptiste and</p> <p>9 Carol DeSantis -- those job descriptions were</p> <p>10 done by my predecessor, the interim dean,</p> <p>11 Joanne Arbuckle.</p> <p>12 The descriptions for the jobs that</p> <p>13 were added during my tenure were written</p> <p>14 freshly and in collaboration with Academic</p> <p>15 Affairs and Human Resources.</p> <p>16 Q. Yes, but these are both in writing,</p> <p>17 right --</p> <p>18 A. They are.</p> <p>19 Q. -- both set of job descriptions are</p> <p>20 in writing --</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Okay.</p> <p>23 Your predecessor, Ms. Arbuckle,</p> <p>24 there was a job description was there not for</p> <p>25 each of these individuals; was there not?</p>	<p style="text-align: right;">144</p> <p>1 DAVIS, Ph.D.</p> <p>2 be because Ms. DeSantis was also handling</p> <p>3 admission.</p> <p>4 MR. SELLS: Okay. So, I call</p> <p>5 for the production of the job</p> <p>6 descriptions for Ms. DeSantis,</p> <p>7 Mr. Baptiste, Ms. Alsop, Ms. Barton</p> <p>8 and Ms. Phillips both when Ms. Arbuckle</p> <p>9 was there and then when you were</p> <p>10 there.</p> <p>11 MR. MELITO: Follow up in</p> <p>12 writing please, Derek.</p> <p>13 I'll just make a standing</p> <p>14 request any document requests just</p> <p>15 follow up in writing.</p> <p>16 MR. SELLS: We will.</p> <p>17 Q. All right.</p> <p>18 So you are going to swear it to,</p> <p>19 right, Dr. Davis, you are going to swear that</p> <p>20 Ms. Phillips did not take over separate duties</p> <p>21 that were not part of her job description when</p> <p>22 Ms. DeSantis retired; is that correct?</p> <p>23 A. No, that is not correct. And again --</p> <p>24 Q. Oh. You are not going to swear to</p> <p>25 it --</p>

<p style="text-align: right;">145</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Again, I have said that I would need</p> <p>3 to see the document, the job description, in</p> <p>4 order to give you an answer to that question.</p> <p>5 Q. Got it.</p> <p>6 So you're saying then, just so we</p> <p>7 are clear, you are not sure whether or not</p> <p>8 Ms. Phillips was working out of her job</p> <p>9 description; is that correct?</p> <p>10 A. Ms. Phillips would not have been</p> <p>11 working out of her job description if she --</p> <p>12 because her job description did not specify</p> <p>13 that she was supporting any specific</p> <p>14 department.</p> <p>15 Q. I see.</p> <p>16 And under whose definition of her</p> <p>17 job description did it become so amorphous</p> <p>18 that you couldn't tell whether she was</p> <p>19 working outside of her job description; is</p> <p>20 that your description of her job or is that</p> <p>21 from before?</p> <p>22 A. That is the position description</p> <p>23 that was in Human Resources for Ms. Phillips.</p> <p>24 Q. Okay.</p> <p>25 But who wrote it? Was it's you --</p>	<p style="text-align: right;">147</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No, they aren't.</p> <p>3 Q. Okay.</p> <p>4 So then you're going to say right</p> <p>5 now under oath that Ms. Phillips' job</p> <p>6 description encompassed everything that she</p> <p>7 did; is that right?</p> <p>8 A. No, sir. I'm saying that in order</p> <p>9 for --</p> <p>10 Q. This is funny --</p> <p>11 A. -- in order to answer your question,</p> <p>12 I would need to see the document.</p> <p>13 Q. But yet you're saying that</p> <p>14 Ms. Phillips did not qualify for a</p> <p>15 reclassification of her job because</p> <p>16 everything she did was already put in her job</p> <p>17 description; you're saying two different</p> <p>18 things. Don't you see what you're saying,</p> <p>19 Doctor?</p> <p>20 A. I am not saying two different</p> <p>21 things. In fact, I am saying the same thing</p> <p>22 repeatedly. It is -- it is the same thing.</p> <p>23 Q. All right. I got it. I'll just</p> <p>24 move on.</p> <p>25 But certainly you recall helping</p>
<p style="text-align: right;">146</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I did not write it --</p> <p>3 Q. -- was it Ms. Arbuckle?</p> <p>4 A. I do not know.</p> <p>5 Q. Okay.</p> <p>6 So what did Ms. Phillips' job</p> <p>7 description say that was so amorphous that it</p> <p>8 couldn't be said that she ever worked outside</p> <p>9 of her job description; what were the words</p> <p>10 used about it?</p> <p>11 A. First of all, I never described it</p> <p>12 as an amorphous. I simply said that in order</p> <p>13 to answer your question, I would need to see</p> <p>14 that job description.</p> <p>15 Q. I'm confused because you keep saying</p> <p>16 that Ms. Phillips could not have worked</p> <p>17 outside of her job description because her</p> <p>18 job description encompassed all the things</p> <p>19 that Ms. Phillips did. Yet, when I ask you</p> <p>20 to describe the language that said it was so,</p> <p>21 you know, broad that it encapsulated</p> <p>22 everything, you keep saying, "I need to see</p> <p>23 the document --"</p> <p>24 A. That's correct.</p> <p>25 Q. They are two different things --</p>	<p style="text-align: right;">148</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton try and get a raise, right?</p> <p>3 A. No, that is a mischaracterization.</p> <p>4 Ms. Barton was working out of class, clearly</p> <p>5 working out of her classification; and under</p> <p>6 the union rules in those instances, there</p> <p>7 needs to be a re-evaluation of the -- of the</p> <p>8 position and that is what I asked for. That</p> <p>9 is what the content of my letter to the vice</p> <p>10 president reflects that and the process that</p> <p>11 was followed was a process for re-evaluation.</p> <p>12 Q. All right.</p> <p>13 Was there a point in time when</p> <p>14 Umilta Alsop went out on FMLA leave?</p> <p>15 A. Not that I recall.</p> <p>16 Q. You don't? So you don't remember</p> <p>17 Umilta Alsop going out on FMLA leave and you</p> <p>18 assigning to Ms. Phillips the duties that she</p> <p>19 had related to Art Market?</p> <p>20 A. I don't recall specifically.</p> <p>21 Q. Oh.</p> <p>22 A. But that may have happened --</p> <p>23 Q. Oh.</p> <p>24 So when Ms. Phillips did the job of</p> <p>25 the Art Market, that was not part of her job</p>

<p style="text-align: right;">149</p> <p>1 DAVIS, Ph.D.</p> <p>2 description, correct?</p> <p>3 A. No, sir.</p> <p>4 Again, the job descriptions are not</p> <p>5 specific to departments. So the tasks that</p> <p>6 are described in the job description do not</p> <p>7 relate to specific departments. That's all.</p> <p>8 Q. Okay. All right.</p> <p>9 So suffice it to say that all the</p> <p>10 African-American people that reported to you</p> <p>11 you never saw fit to write a letter for them</p> <p>12 to get a reclassification or a raise?</p> <p>13 MR. DRANOFF: Object to the</p> <p>14 form.</p> <p>15 Q. Right?</p> <p>16 A. I was engaged in discussions with</p> <p>17 all members of the staff about reorganization</p> <p>18 as the school was growing and we were adding</p> <p>19 new faculty to departments and adding an</p> <p>20 entirely new department.</p> <p>21 So, we were all working, in my view</p> <p>22 at least, to try to more precisely define</p> <p>23 what the staff roles were going to be and how</p> <p>24 the staff that we had was going to be</p> <p>25 distributed in order to make the organization</p>	<p style="text-align: right;">151</p> <p>1 DAVIS, Ph.D.</p> <p>2 Barton because she was working out of</p> <p>3 classification and because, per the union</p> <p>4 contract, that is not allowable.</p> <p>5 Q. Now, the responsibilities that you</p> <p>6 claim Marilyn Barton had that were outside of</p> <p>7 her job description, how did she get them?</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form.</p> <p>10 A. Marilyn was not assigned to -- to a</p> <p>11 specific program. When I came to F.I.T., she</p> <p>12 was sitting outside the dean's office and</p> <p>13 doing work to support the dean; and so, we</p> <p>14 just continued with that work.</p> <p>15 Also, as the school grew and there</p> <p>16 were more things that needed to be school</p> <p>17 wide initiatives, Marilyn was involved in</p> <p>18 those.</p> <p>19 Q. Can you answer my question now? Can</p> <p>20 you, please, listen to the question and</p> <p>21 answer it? Who gave Ms. Barton her job</p> <p>22 responsibilities?</p> <p>23 A. I did.</p> <p>24 Q. You did --</p> <p>25 A. Yeah --</p>
<p style="text-align: right;">150</p> <p>1 DAVIS, Ph.D.</p> <p>2 as functional as possible.</p> <p>3 Q. I don't really understand your</p> <p>4 answer.</p> <p>5 My question was, During your tenure,</p> <p>6 the African-American employees that worked on</p> <p>7 your staff, you never saw fit to write a</p> <p>8 letter to reclassify them or get them a</p> <p>9 raise --</p> <p>10 MR. DRANOFF: Object to the</p> <p>11 form --</p> <p>12 Q. -- is that right?</p> <p>13 A. I -- first of all, I am not in the</p> <p>14 position or was not in the position as dean</p> <p>15 of granting anyone a raise. I was simply in</p> <p>16 the position of being able to request</p> <p>17 consideration of the process that would</p> <p>18 facilitate that; and I did not have the</p> <p>19 opportunity to request any such consideration</p> <p>20 for any of the employees that you mentioned.</p> <p>21 Q. Just the white one, right? Just the</p> <p>22 Caucasian one, Marilyn Barton, right? She is</p> <p>23 the only one you saw fit to be able to make</p> <p>24 that request of, right?</p> <p>25 A. I made the request for Marilyn</p>	<p style="text-align: right;">152</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. -- so you chose to give her</p> <p>3 responsibilities that were outside of her job</p> <p>4 description so you could then give her or</p> <p>5 make a request for her to be reclassified and</p> <p>6 given a raise --</p> <p>7 A. No --</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form --</p> <p>10 Q. -- isn't that right?</p> <p>11 A. No --</p> <p>12 Q. No, okay. Okay --</p> <p>13 A. That is not right --</p> <p>14 Q. -- but you were responsible for</p> <p>15 giving job duties to Ms. Alsop, to</p> <p>16 Ms. Phillips as well as to Mr. Baptiste as</p> <p>17 well, correct?</p> <p>18 A. They had assignments -- so no, I was</p> <p>19 not singularly responsible for that. For</p> <p>20 example --</p> <p>21 Q. No. No. No. I'm not asking you</p> <p>22 for all of that. I'm saying, Did you not</p> <p>23 give Ms. Phillips her responsibilities?</p> <p>24 A. Ms. Phillips when I came to F.I.T.</p> <p>25 already had some of her responsibilities.</p>



<p style="text-align: right;">153</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. No. No. No. No. No. I am</p> <p>3 asking you, Did you give her</p> <p>4 responsibilities? Were you able to give her</p> <p>5 responsibilities since she worked for you?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 You gave her, for example, the</p> <p>9 illustrations that were done by Ms. DeSantis,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. And you gave her, when Ms. Alsop</p> <p>13 went out on FMLA, you gave her</p> <p>14 responsibilities that Ms. Alsop had, you did</p> <p>15 that, correct?</p> <p>16 A. In collaboration with Marjorie.</p> <p>17 Q. Okay --</p> <p>18 A. We discussed it.</p> <p>19 Q. All right.</p> <p>20 And so you could have given her</p> <p>21 other responsibilities that fell outside of</p> <p>22 her job description like you did for</p> <p>23 Ms. Barton, right?</p> <p>24 A. Ms. Barton was already performing</p> <p>25 some of those duties when I arrived; because</p>	<p style="text-align: right;">155</p> <p>1 DAVIS, Ph.D.</p> <p>2 saying under oath that Ms. Alsop did not do</p> <p>3 work as the dean's assistant when you became</p> <p>4 the dean at any point in time that you were</p> <p>5 the dean?</p> <p>6 A. There was no position as assistant</p> <p>7 to the dean when I arrived.</p> <p>8 Q. Is that my question?</p> <p>9 A. You asked if she was performing the</p> <p>10 work of assistant to the dean. The answer is</p> <p>11 there was no such position.</p> <p>12 Q. Did she do work as assistant to the</p> <p>13 dean without there being a title for it?</p> <p>14 A. Umilta did -- her special area was,</p> <p>15 and I believe still is, budget work; and</p> <p>16 that -- in the capacity that that is</p> <p>17 assisting the dean, yes.</p> <p>18 Q. You know Ms. Alsop is going to</p> <p>19 testify, right --</p> <p>20 A. Yeah --</p> <p>21 Q. -- okay. So you are saying under</p> <p>22 oath that she didn't do any of the work that</p> <p>23 Ms. Barton got credit for; is that correct?</p> <p>24 A. I am not saying that, and I don't</p> <p>25 know what you mean by "work that Ms. Barton</p>
<p style="text-align: right;">154</p> <p>1 DAVIS, Ph.D.</p> <p>2 she was assisting the person who preceded me</p> <p>3 and the people who preceded me; so I</p> <p>4 inherited a situation where Ms. Barton was</p> <p>5 already working out of classification and</p> <p>6 over time was able to make the request, per</p> <p>7 the union contract, to have this evaluated.</p> <p>8 Q. Okay.</p> <p>9 Wasn't it Ms. Alsop that had the</p> <p>10 responsibility of doing the work of the</p> <p>11 dean's assistant?</p> <p>12 A. That preceded me by a long time.</p> <p>13 Q. So, she stopped doing the dean's</p> <p>14 work when you got there?</p> <p>15 A. When I arrived, she was doing budget</p> <p>16 work and administrative work.</p> <p>17 Q. Okay.</p> <p>18 So, are you saying here under oath</p> <p>19 that Ms. Alsop did not do the work of the</p> <p>20 dean's assistant while you were the dean?</p> <p>21 A. When I arrived Ms. Alsop was not the</p> <p>22 dean's assistant.</p> <p>23 Q. That's not my question.</p> <p>24 A. That's my answer.</p> <p>25 Q. No. The question was, Are you</p>	<p style="text-align: right;">156</p> <p>1 DAVIS, Ph.D.</p> <p>2 got credit for."</p> <p>3 Q. Well, Ms. Barton was the one that</p> <p>4 was given your blessings to get reclassified</p> <p>5 and a raise because you said that you gave</p> <p>6 her responsibilities that fell outside of her</p> <p>7 job title?</p> <p>8 A. I said that when I arrived</p> <p>9 Ms. Barton was already doing jobs that were</p> <p>10 outside of her job description and that over</p> <p>11 time as those duties increased, it became</p> <p>12 necessary to seek a re-evaluation of her</p> <p>13 position; because she was working -- that she</p> <p>14 was working outside of the job description</p> <p>15 and that is not permissible under the laws of</p> <p>16 the collective bargaining agreement.</p> <p>17 Q. Okay.</p> <p>18 And so as these responsibilities</p> <p>19 increased on Ms. Barton, you're saying that</p> <p>20 none of those responsibilities were shared</p> <p>21 with Ms. Alsop; is that right?</p> <p>22 A. No, I'm not saying that.</p> <p>23 Q. Well, were they or were they not?</p> <p>24 A. I don't know what you mean by</p> <p>25 shared.</p>



<p style="text-align: right;">157</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. You were the one that was assigning</p> <p>3 the work?</p> <p>4 A. I still don't know what you mean by</p> <p>5 "shared." What do you mean? That -- what do</p> <p>6 you mean by "shared"?</p> <p>7 Q. You don't know what it means to</p> <p>8 share work?</p> <p>9 A. I don't know what you are referring</p> <p>10 to when you say that some of those duties</p> <p>11 were shared.</p> <p>12 Q. All right.</p> <p>13 What do you think I mean?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay.</p> <p>16 You don't know what I mean?</p> <p>17 A. I don't know.</p> <p>18 Q. So, if someone has the duty of</p> <p>19 copying papers and it becomes very burdensome</p> <p>20 so that the duty of copying papers has to be</p> <p>21 shared; you don't understand what that means?</p> <p>22 A. I do, but I don't understand what --</p> <p>23 Q. So tell me what that means --</p> <p>24 A. I --</p> <p>25 Q. No. No. No --</p>	<p style="text-align: right;">159</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Right?</p> <p>3 A. Yes.</p> <p>4 Q. It got to the point where you need</p> <p>5 to go get a reclassification; is that what</p> <p>6 you said?</p> <p>7 A. That is what I said.</p> <p>8 Q. And so my question is, Well, these</p> <p>9 duties that increased, were they shared with</p> <p>10 Ms. Alsop?" And you said, "I don't know what</p> <p>11 you mean. I don't know what you mean when</p> <p>12 you talk about "shared duties. What do you</p> <p>13 mean by "shared duties --"</p> <p>14 A. No.</p> <p>15 Q. So again, I ask you, Were these</p> <p>16 duties shared between Ms. Barton and</p> <p>17 Ms. Alsop?</p> <p>18 A. I will need a clarification on --</p> <p>19 Q. You will need it --</p> <p>20 A. -- on which duties -- in order to</p> <p>21 answer this question, I would need a</p> <p>22 clarification on which duties you are</p> <p>23 referring to that are shared by Ms. Alsop and</p> <p>24 Ms. Barton.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">158</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Would you allow me --</p> <p>3 Q. No. No. Before we go on to -- I</p> <p>4 just asked you a hypothetical. I said</p> <p>5 someone has the duty of making copies and the</p> <p>6 duty becomes so burdensome that it has to be</p> <p>7 shared; and I asked you do you understand</p> <p>8 what that means and you said yes, you</p> <p>9 understand what that means; is that right?</p> <p>10 A. I understand your hypothetical --</p> <p>11 Q. Okay.</p> <p>12 So now, since you understand what</p> <p>13 that means, then you also understand that</p> <p>14 Ms. Barton had job duties that you say were</p> <p>15 so immense and so out of title for her that</p> <p>16 you need to go and write this letter for her</p> <p>17 to get a reclassification, otherwise it would</p> <p>18 be in violation of the collective bargaining</p> <p>19 agreement, right; that's what you said,</p> <p>20 correct?</p> <p>21 A. No, that is not what I said. I did</p> <p>22 not use the word "immense."</p> <p>23 Q. Okay.</p> <p>24 You said as the duties increased?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">160</p> <p>1 DAVIS, Ph.D.</p> <p>2 Sitting here right now, you don't</p> <p>3 know, right --</p> <p>4 A. I don't know --</p> <p>5 Q. Right --</p> <p>6 A. -- I don't know what you are</p> <p>7 referring to.</p> <p>8 Q. Okay. Let's go on, and we will move</p> <p>9 on to another topic.</p> <p>10 Do you recall receiving a complaint</p> <p>11 of race discrimination from Ms. Phillips?</p> <p>12 A. Are you speaking about a written</p> <p>13 complaint or an oral complaint?</p> <p>14 Q. Under the policy of</p> <p>15 antidiscrimination, does it matter?</p> <p>16 A. No, it didn't matter under the</p> <p>17 policy; but I'm cure- -- I just wanted a</p> <p>18 clarification about what we are talking about</p> <p>19 here.</p> <p>20 Q. Why?</p> <p>21 A. So that I could answer the question</p> <p>22 to the best of my ability.</p> <p>23 Q. Okay.</p> <p>24 So the question was, Do you recall</p> <p>25 getting a complaint of discrimination from</p>

<p style="text-align: right;">161</p> <p>1 DAVIS, Ph.D.</p> <p>2 Marjorie Phillips?</p> <p>3 A. I do not recall getting a complaint</p> <p>4 that would rise -- from Ms. Phillips -- that</p> <p>5 would rise to the level of discrimination as</p> <p>6 defined in the policy, in the F.I.T. policy.</p> <p>7 Q. Okay.</p> <p>8 So your answer is no, you didn't get</p> <p>9 a complaint of discrimination; is that right?</p> <p>10 A. My complaint -- my answer is as I</p> <p>11 stated, that I did not get a complaint from</p> <p>12 Ms. Phillips that met the requirements of the</p> <p>13 antidiscrimination policy and it's definition --</p> <p>14 definition sections.</p> <p>15 Q. And just again for my understanding,</p> <p>16 what was it that Ms. Phillips said to you</p> <p>17 that you didn't believe rose to the level of</p> <p>18 a discrimination complaint under the policy?</p> <p>19 A. There were four instances which are</p> <p>20 all recorded in Ms. Phillips' affirmative</p> <p>21 action complaint that -- that I -- that I</p> <p>22 would point to. That I would -- yeah, there</p> <p>23 were those four instances that are reflected</p> <p>24 in her complaint.</p> <p>25 Q. Okay. What were they?</p>	<p style="text-align: right;">163</p> <p>1 DAVIS, Ph.D.</p> <p>2 know why -- now, did Ms. Phillips say, when</p> <p>3 she described this conversation, that she</p> <p>4 believed it to be offensive?</p> <p>5 A. Yes, I believe she said the word</p> <p>6 "offensive."</p> <p>7 Q. And did she say it was offensive to</p> <p>8 her as an African-American woman?</p> <p>9 A. I don't recall specifically, but</p> <p>10 perhaps.</p> <p>11 Q. And she felt like this was</p> <p>12 discriminatory; is that right?</p> <p>13 A. I don't believe that she ever used</p> <p>14 the word "discriminatory."</p> <p>15 Q. So, she just said, you know,</p> <p>16 Ms. Cowan said something about the back of</p> <p>17 the bus and I was offended, but it wasn't a</p> <p>18 discriminatory statement; is that -- do you</p> <p>19 really want us to believe that?</p> <p>20 A. Well, you can believe what you would</p> <p>21 like to believe. But I can tell you that</p> <p>22 Marjorie reported to me that that was</p> <p>23 offensive and she probably said, although I</p> <p>24 cannot recall the specifics of that</p> <p>25 conversation, that it was offensive to her</p>
<p style="text-align: right;">162</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. So the first one was an incident</p> <p>3 involving Brenda Cowan and Umilta Alsop.</p> <p>4 Marjorie overhearing a conversation -- a</p> <p>5 fragment of a conversation between the two of</p> <p>6 them. I was not present.</p> <p>7 The second one was --</p> <p>8 Q. What was the comment that</p> <p>9 Ms. Phillips told you about?</p> <p>10 A. Again, I was not there; but the</p> <p>11 report to me was from both Brenda, who is</p> <p>12 white, and Umilta, who is black, and</p> <p>13 Marjorie; so separate reports. Saying that</p> <p>14 Umilta and Brenda were speaking in the open</p> <p>15 part of the office and joking about</p> <p>16 something, and Marjorie came in; and as I</p> <p>17 understand it, Brenda said something to the</p> <p>18 effect of why don't you come and join us in</p> <p>19 the back of the school bus?</p> <p>20 Q. In the back of the bus?</p> <p>21 A. I -- I recall the words "school bus"</p> <p>22 as coming up in the reports to me; but I -- I</p> <p>23 can't be sure.</p> <p>24 Q. Okay.</p> <p>25 So, "the back of the bus." Do you</p>	<p style="text-align: right;">164</p> <p>1 DAVIS, Ph.D.</p> <p>2 specifically as a black person.</p> <p>3 Q. Right.</p> <p>4 And because you know the reference</p> <p>5 to "back of the bus" relates to Jim Crow,</p> <p>6 right?</p> <p>7 A. I don't know that the reference to</p> <p>8 "back of the bus" in this instance, this</p> <p>9 fragment of a conversation that Ms. Phillips</p> <p>10 overheard, refers to Jim Crow in any way.</p> <p>11 Q. Have you ever heard of Rosa Parks?</p> <p>12 A. Yes, sir.</p> <p>13 Q. When did you first hear about Rosa</p> <p>14 Parks?</p> <p>15 A. When I was a child.</p> <p>16 Q. And what do you remember about Rosa</p> <p>17 Parks that made it so that you as a child</p> <p>18 learned about her?</p> <p>19 A. I know about Rosa Parks as the civil</p> <p>20 rights hero who got on a bus.</p> <p>21 Q. "Got on a bus"?</p> <p>22 A. On a segregated bus and broke</p> <p>23 barriers by doings so.</p> <p>24 Q. Okay. A segregated bus.</p> <p>25 And why in your memory or retelling</p>

<p style="text-align: right;">165</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the Rosa Park's story, why was the bus</p> <p>3 segregated?</p> <p>4 A. Because as -- as it was case in this</p> <p>5 country buses were segregated so that black</p> <p>6 people, people of color, were made to sit at</p> <p>7 that time back of the bus.</p> <p>8 Q. Oh. The "back of the bus." That's</p> <p>9 where the black folks had to sit, right?</p> <p>10 A. Historically, yes.</p> <p>11 Q. Oh. But you couldn't see how that</p> <p>12 might be perceived as offensive to</p> <p>13 Ms. Phillips?</p> <p>14 A. What I --</p> <p>15 Q. -- is that right?</p> <p>16 A. No --</p> <p>17 Q. -- is that right?</p> <p>18 A. What I had a report of was a white</p> <p>19 woman and a black woman joking and laughing,</p> <p>20 and Marjorie coming in and overhearing a</p> <p>21 fragment of their conversation in which the</p> <p>22 phrase "join us at the back of the bus" was</p> <p>23 used.</p> <p>24 Q. And so you didn't think it was your</p> <p>25 responsibility to bring that to the attention</p>	<p style="text-align: right;">167</p> <p>1 DAVIS, Ph.D.</p> <p>2 it, and I believe she spoke to Brenda Cowan</p> <p>3 directly about it --</p> <p>4 Q. Did you ask her to speak to Brenda</p> <p>5 Cowan?</p> <p>6 A. I would not have asked her to do it.</p> <p>7 I would have suggested that in order to get</p> <p>8 the fuller picture of what was being said,</p> <p>9 rather than just the fragment of what she</p> <p>10 overheard, that she have a conversation with</p> <p>11 Brenda. But I would not have required in any</p> <p>12 way that she do so.</p> <p>13 Q. Well, one thing you did not do is</p> <p>14 report it to the Affirmative Action Office,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that is because you believed</p> <p>18 that this did not rise to the level that was</p> <p>19 required for you to have to report it, right?</p> <p>20 A. That's correct.</p> <p>21 Q. All right.</p> <p>22 MR. SELLS: Can we go to</p> <p>23 Exhibit 3.</p> <p>24 (The image is shared on the</p> <p>25 computer screen.)</p>
<p style="text-align: right;">166</p> <p>1 DAVIS, Ph.D.</p> <p>2 of the affirmative action officer; is that</p> <p>3 right?</p> <p>4 A. Under the policy and the terms of</p> <p>5 the policy, the definitions included in the</p> <p>6 policy, I did not.</p> <p>7 Q. Okay.</p> <p>8 So what did you do -- well, let me</p> <p>9 ask you that. When Ms. Phillips told you</p> <p>10 about that incident, was that her only</p> <p>11 complaint or did she come to you with</p> <p>12 multiple complaints at the same time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Okay.</p> <p>15 But this was one of the complaints</p> <p>16 that she made, correct?</p> <p>17 A. This was a complaint -- this</p> <p>18 complaint, I believe, goes back to 2014; so</p> <p>19 this complaint, I believe, was made on its</p> <p>20 own.</p> <p>21 Q. Okay.</p> <p>22 What did you do when she came to you</p> <p>23 with that complaint?</p> <p>24 A. I listened to her respectfully. I</p> <p>25 heard what her reaction was. We talked about</p>	<p style="text-align: right;">168</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. SELLS: If we could go to</p> <p>3 page 9. Go to "Complaint and</p> <p>4 investigation procedure where an</p> <p>5 employee is the Respondent."</p> <p>6 Q. This is the section of the</p> <p>7 antidiscrimination policy that we looked at</p> <p>8 earlier that deals with the "complaint and</p> <p>9 investigation procedure where an employee is</p> <p>10 the Respondent." Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So, what it says is "Any person who</p> <p>14 believes they may have been a victim of or</p> <p>15 believes they may have witnessed</p> <p>16 discrimination, harassment or retaliation</p> <p>17 committed by an employee should report the</p> <p>18 incident to the affirmative action officer</p> <p>19 in the Office of Compliance and Audit."</p> <p>20 MR. DRANOFF: I'm not reading</p> <p>21 that same thing, Derek.</p> <p>22 MR. SELLS: What?</p> <p>23 MR. DRANOFF: I'm trying to --</p> <p>24 MR. SELLS: It says "Office of</p> <p>25 Compliance and Audit at 212-217 --"</p>

<p style="text-align: right;">169</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. DRANOFF: I see that. I</p> <p>3 see that.</p> <p>4 MR. SELLS: "-- or 333 7th</p> <p>5 Avenue, 16th floor.</p> <p>6 Q. "Alternatively, such incidents may</p> <p>7 be reported to F.I.T.'s Office of Human</p> <p>8 Resources or any senior administrator, dean,</p> <p>9 department director, department chairperson</p> <p>10 or coordinator or any other person with</p> <p>11 supervisory responsibility.</p> <p>12 Although such complaints need not be</p> <p>13 in writing, F.I.T. strongly encourages</p> <p>14 individuals to file a written complaint. Any</p> <p>15 person with supervisory responsibility who</p> <p>16 receives a complaint formally or informally</p> <p>17 in writing, orally or otherwise, of</p> <p>18 discrimination, harassment or retaliation</p> <p>19 must report such information to the</p> <p>20 affirmative action officer immediately."</p> <p>21 So you understand that is the</p> <p>22 policy, right?</p> <p>23 A. I do.</p> <p>24 Q. Okay.</p> <p>25 So, Ms. Phillips believed that she</p>	<p style="text-align: right;">171</p> <p>1 DAVIS, Ph.D.</p> <p>2 doesn't say that they have to fit the</p> <p>3 definition of discrimination or retaliation</p> <p>4 or harassment. It just says if the "employee</p> <p>5 believes that they have." Will you agree</p> <p>6 with me on that?</p> <p>7 A. Yes. But that --</p> <p>8 Q. Okay. Okay. Yes, you agree.</p> <p>9 It doesn't say that any person who</p> <p>10 Dean Davis believes faced discrimination,</p> <p>11 harassment or retaliation has to be reported</p> <p>12 to the affirmative action officer, right? It</p> <p>13 doesn't say that, does it?</p> <p>14 A. It says, "Any person who believes</p> <p>15 they have -- may have been a victim of or who</p> <p>16 believes they may have witnessed</p> <p>17 discrimination --"</p> <p>18 Q. I understand that. I just read</p> <p>19 that.</p> <p>20 I said, it does not say that any</p> <p>21 person that Dean Davis believes may have been</p> <p>22 a victim of or who believes they may have</p> <p>23 witnessed discrimination, harassment or</p> <p>24 retaliation; it doesn't say that, right?</p> <p>25 A. No, but the --</p>
<p style="text-align: right;">170</p> <p>1 DAVIS, Ph.D.</p> <p>2 was either a victim of or a witness to a</p> <p>3 discriminatory statement regarding black</p> <p>4 people being at the back of the bus; isn't</p> <p>5 that right?</p> <p>6 A. I don't believe that's correct.</p> <p>7 Q. You don't believe that was correct --</p> <p>8 A. Well, actually I can't say what</p> <p>9 Ms. Phillips's believed.</p> <p>10 Q. You can't say --</p> <p>11 A. I --</p> <p>12 Q. And so in that situation, it's your</p> <p>13 understanding of this policy that you don't</p> <p>14 have to report it even though you don't know</p> <p>15 what Ms. Phillips had in her mind; is that</p> <p>16 right?</p> <p>17 A. I think that the key issue here is</p> <p>18 the terminology "discrimination, harassment</p> <p>19 or retaliation." As you looked at the</p> <p>20 definitions of those terms, I believe you</p> <p>21 will find a -- a differential between what an</p> <p>22 employee's view of discrimination, harassment</p> <p>23 or retaliation can be versus what is policy.</p> <p>24 Q. I see. This says that "any person</p> <p>25 who believes they may have been..." It</p>	<p style="text-align: right;">172</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. No, it doesn't. Okay --</p> <p>3 A. No. However, the paragraph --</p> <p>4 Q. There is no "however." I'm not</p> <p>5 asking you about the paragraph. I am asking</p> <p>6 you whether it says any person who Dean Davis</p> <p>7 believes; you understand your name does not</p> <p>8 appear in there as to whose belief controls;</p> <p>9 it's not your name in there, is it?</p> <p>10 A. It is not my name.</p> <p>11 Q. Okay.</p> <p>12 So, in a situation where an employee</p> <p>13 believes that they have been a witness to or</p> <p>14 a victim of discrimination, it's the dean's</p> <p>15 requirement to inform the affirmative action</p> <p>16 officer immediately, right?</p> <p>17 A. If the dean gets a report of</p> <p>18 discrimination, harassment or retaliation --</p> <p>19 Q. Is that the way you read it? Where</p> <p>20 does it say "if the dean gets a complaint"?</p> <p>21 Doesn't it say, "Any person who believes"?</p> <p>22 "Any person who believes" whether or not the</p> <p>23 belief is true or not, whether the --</p> <p>24 MR. DRANOFF: Derek. Derek you</p> <p>25 are not letting the witness -- you</p>

<p style="text-align: right;">173</p> <p>1 DAVIS, Ph.D.</p> <p>2 the witness' answer. Let her</p> <p>3 respond, please.</p> <p>4 A. Yes, I think that the key words here</p> <p>5 are "discrimination, harassment or</p> <p>6 retaliation." Not the word "believes."</p> <p>7 Q. You read it without the word</p> <p>8 believes -- that's --</p> <p>9 A. I --</p> <p>10 MR. DRANOFF: She is drawing</p> <p>11 your attention to last sentence,</p> <p>12 Derek.</p> <p>13 A. I'm drawing your attention to the</p> <p>14 last sentence. Discrimination, harassment or</p> <p>15 retaliation. Ms. Phillips' report of the</p> <p>16 incident was not aligned with the definitions</p> <p>17 of any of those things, nor do I recall her</p> <p>18 using -- speaking about "discrimination" in</p> <p>19 this instance.</p> <p>20 Q. Right. Got it.</p> <p>21 So, "back of the bus," Rosa Parks,</p> <p>22 segregated bus, nothing do with</p> <p>23 discrimination, right?</p> <p>24 A. Ms. Phillips never raised Rosa Parks</p> <p>25 or any of the things that you have brought</p>	<p style="text-align: right;">175</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. These, again --</p> <p>3 Q. -- racial issue?</p> <p>4 A. -- action complaints -- and I'm</p> <p>5 making them out of sequence -- but I believe</p> <p>6 that the next one was when Kyle Farmer, who</p> <p>7 was in the office, made a remark about</p> <p>8 Ms. Phillips who was putting on her hat</p> <p>9 saying to her, "You -- you look like you're</p> <p>10 going to the hood."</p> <p>11 Q. "You look like you're going to the</p> <p>12 hood." Okay.</p> <p>13 What did Ms. Phillips say about</p> <p>14 that?</p> <p>15 A. I believe that Ms. Phillips -- when</p> <p>16 she reported it to me, is that your question?</p> <p>17 Q. Yes.</p> <p>18 A. She took offense at the comment --</p> <p>19 Q. Why --</p> <p>20 A. -- of -- well, I can't speak to why</p> <p>21 Ms. Phillips took offense to it. She told me</p> <p>22 that she took offense to the phrase, "look</p> <p>23 like you're going the hood."</p> <p>24 Q. Did you ask her why?</p> <p>25 A. I don't recall, specifically.</p>
<p style="text-align: right;">174</p> <p>1 DAVIS, Ph.D.</p> <p>2 into this discussion when we spoke.</p> <p>3 Q. Oh, no? She said "back of the bus,"</p> <p>4 right?</p> <p>5 A. Ms. Phillips did not say "back of</p> <p>6 the bus." Ms. Phillips overheard Brenda</p> <p>7 Cowan speaking to you Umlita Alsop. She</p> <p>8 overheard, in my understanding, a fragment of</p> <p>9 a sentence that included the phrase "back of</p> <p>10 the bus." Join us -- meaning Brenda, a white</p> <p>11 woman, and Umlita a black woman -- here in</p> <p>12 the back of the bus.</p> <p>13 Q. Okay. Okay.</p> <p>14 So that's the way you took it? Oh,</p> <p>15 no discrimination there. No need to report.</p> <p>16 Right?</p> <p>17 A. Under the provisions of the policy</p> <p>18 and the definitional description under the</p> <p>19 policy, that's correct.</p> <p>20 Q. Okay.</p> <p>21 MR. SELLS: We can take this</p> <p>22 down.</p> <p>23 Q. Well, what was the next complaint</p> <p>24 that you heard from Ms. Phillips as it</p> <p>25 related to a --</p>	<p style="text-align: right;">176</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Well, what's your understanding of</p> <p>3 "the hood"? What's that mean?</p> <p>4 A. My understanding of "the hood" is</p> <p>5 there is -- there is -- it could be multiple</p> <p>6 definitions of what constitutes the hood.</p> <p>7 Q. Okay.</p> <p>8 So here you have Ms. Phillips, an</p> <p>9 African-American woman, hearing from your</p> <p>10 colleague, Mr. Farmer, who is a white male,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Saying to Ms. Phillips, you need to</p> <p>14 go -- "you look like you're going the hood."</p> <p>15 Right?</p> <p>16 A. I don't know that that was -- that</p> <p>17 sentence was delivered with the affect that</p> <p>18 you just provided.</p> <p>19 Q. Would it make a difference?</p> <p>20 A. It could.</p> <p>21 Q. How?</p> <p>22 A. It could have been a joke. I don't</p> <p>23 know. I don't know what was Kyle's intent in</p> <p>24 saying that.</p> <p>25 Q. But you didn't find that to be</p>

<p style="text-align: right;">177</p> <p>1 DAVIS, Ph.D.</p> <p>2 discriminatory, harassment or retaliatory</p> <p>3 either; is that right?</p> <p>4 A. Under the terms of the policy, no.</p> <p>5 Q. Got it.</p> <p>6 So, you didn't report that to</p> <p>7 Affirmative Action, did you?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay.</p> <p>10 What did you do instead?</p> <p>11 A. I did -- I again spoke with</p> <p>12 Marjorie, and I spoke with Kyle separately,</p> <p>13 to try to understand the situation. Without</p> <p>14 my involvement, Kyle, I'm told, apologized</p> <p>15 profusely to Marjorie. Went to the to the</p> <p>16 extra effort of making a hat for Marjorie as</p> <p>17 a sort of token of, you know, apology to her;</p> <p>18 and that they resolved the issue between the</p> <p>19 two of them.</p> <p>20 Q. Why did Mr. Farmer -- why did he</p> <p>21 apologize?</p> <p>22 A. I -- I -- I believe -- again, I was</p> <p>23 not there, so I don't know definitively. But</p> <p>24 I believe he apologized because Marjorie was</p> <p>25 offended. He did not intend to offend her.</p>	<p style="text-align: right;">179</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. My self-interest had nothing to do</p> <p>3 with it. I acted in accordance with the</p> <p>4 policy and the definitions laid out therein.</p> <p>5 Q. Got it.</p> <p>6 What was the next incident?</p> <p>7 A. I believe that the next incident was</p> <p>8 Ms. Barton coming back from a funeral of a</p> <p>9 elderly relative -- and again these are</p> <p>10 detailed in Ms. Phillips' complaint, so I'm</p> <p>11 recalling to the best of my ability what is</p> <p>12 contained therein, what I recall from the</p> <p>13 incident itself.</p> <p>14 So Marilyn had come back from the</p> <p>15 funeral of an elderly relative and was</p> <p>16 relaying the anecdote about that funeral to a</p> <p>17 student aide, Julia, and was telling her</p> <p>18 something about finding out that one of her</p> <p>19 uncles, I think, had a birth date that was a</p> <p>20 year earlier than anybody had believed it to</p> <p>21 be.</p> <p>22 So it had come out in the funeral</p> <p>23 that he had been born before his parents were</p> <p>24 married, and Marilyn apparently -- and again,</p> <p>25 I was not present -- Marilyn apparently said</p>
<p style="text-align: right;">178</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Why was Ms. Phillips offended?</p> <p>3 A. I don't know other than what I told</p> <p>4 you.</p> <p>5 Q. So, she didn't tell you that she</p> <p>6 thought this was racially offensive that he</p> <p>7 said to her, simply because she was putting</p> <p>8 on her hat, that she looked like she was</p> <p>9 going to hood? You don't know why she was</p> <p>10 offended by that?</p> <p>11 A. I can't speak to Ms. Phillips'</p> <p>12 emotions at that -- in that incident.</p> <p>13 Q. Got it.</p> <p>14 But one thing you certainly didn't</p> <p>15 do was report to the Affirmative Action --</p> <p>16 A. That's --</p> <p>17 Q. -- as the policy said you should,</p> <p>18 right?</p> <p>19 A. No, that's incorrect. I acted in --</p> <p>20 I acted in --</p> <p>21 Q. Your own self-interest, right?</p> <p>22 A. Oh. No, sir.</p> <p>23 MR. DRANOFF: You are not</p> <p>24 letting her finish the answer, Derek.</p> <p>25 Q. Go ahead.</p>	<p style="text-align: right;">180</p> <p>1 DAVIS, Ph.D.</p> <p>2 something like, "Well, I guess that makes him</p> <p>3 a bastard," or she was relating that somebody</p> <p>4 at the funeral said that.</p> <p>5 And it's my understanding that</p> <p>6 Ms. Phillips came in during that conversation</p> <p>7 in the open office and overheard the use of</p> <p>8 the term "bastard" and took offense at the</p> <p>9 use of that term and later came to talk to me</p> <p>10 about that.</p> <p>11 Q. Did you report that to HR -- sorry.</p> <p>12 Did you report that to Affirmative</p> <p>13 Action?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. Because again, it did not meet the</p> <p>17 requirements laid out in the policy and it's</p> <p>18 definitions.</p> <p>19 Q. Okay.</p> <p>20 Were there any other complaints that</p> <p>21 she raised?</p> <p>22 A. I think I'm forgetting one. I'm</p> <p>23 sorry. I just can't recall. If you could</p> <p>24 just --</p> <p>25 MR. SELLS: Why don't we bring</p>

<p style="text-align: right;">181</p> <p>1 DAVIS, Ph.D.</p> <p>2 up Exhibit 29.</p> <p>3 (The image is shared on the</p> <p>4 computer screen.)</p> <p>5 MR. SELLS: Let's just scroll --</p> <p>6 A. Oh, yes. I'm sorry. I see it.</p> <p>7 MR. SELLS: Keep scrolling up.</p> <p>8 Q. Which one?</p> <p>9 A. The comment about the 3/5th rule.</p> <p>10 Q. So, Ms. Phillips brought this to you</p> <p>11 as well, right?</p> <p>12 A. She did.</p> <p>13 Q. Okay.</p> <p>14 So what happened?</p> <p>15 A. Again, I listened respectfully and</p> <p>16 attentively as she told me her concerns and</p> <p>17 the fact that she had, again, overheard a</p> <p>18 fragment of a conversation, not the entire</p> <p>19 conversation, and that she took offense at</p> <p>20 any comment about the 3/5th's rule happening</p> <p>21 in the office; and I explained to her that my</p> <p>22 understanding was this was simply a</p> <p>23 discussion about history and facts. This is</p> <p>24 a part of American history, and I believe</p> <p>25 that this topic of discussion -- again, I was</p>	<p style="text-align: right;">183</p> <p>1 DAVIS, Ph.D.</p> <p>2 you were interviewed as part of this process,</p> <p>3 right?</p> <p>4 A. I was.</p> <p>5 Q. Okay.</p> <p>6 Do you remember when you were</p> <p>7 interviewed?</p> <p>8 A. It was late -- I believe I was the</p> <p>9 last person because of scheduling issues. It</p> <p>10 was probably in May.</p> <p>11 Q. May of 2018?</p> <p>12 A. I believe that's correct.</p> <p>13 Q. Okay.</p> <p>14 And what is written here for</p> <p>15 Respondent 4; is that accurate?</p> <p>16 A. I believe it is.</p> <p>17 Q. Okay. So then where it says,</p> <p>18 "Respondent 4 stated that when Complainant</p> <p>19 brought forth complaints against Respondent</p> <p>20 3, she instructed the Complainant to speak</p> <p>21 with Respondent 3 and come back to speak with</p> <p>22 her if she had additional issues she wanted</p> <p>23 to discuss."</p> <p>24 Is that right?</p> <p>25 A. I would -- I would not be certain of</p>
<p style="text-align: right;">182</p> <p>1 DAVIS, Ph.D.</p> <p>2 not there -- but that seems to have been what</p> <p>3 the discussion between Ms. Barton and the</p> <p>4 student aide was.</p> <p>5 And I don't believe that the</p> <p>6 Complainant disputes that.</p> <p>7 Q. That who, "the Complainant"?</p> <p>8 A. Ms. Phillips. I'm looking at the</p> <p>9 language that is on the screen.</p> <p>10 Q. Okay.</p> <p>11 MR. SELLS: Can we scroll down.</p> <p>12 Stop.</p> <p>13 Q. Did there come a time when you</p> <p>14 learned that a complaint was brought against</p> <p>15 you for failing to adhere to the</p> <p>16 antidiscrimination policies?</p> <p>17 A. No complaint was brought against me</p> <p>18 for that.</p> <p>19 Q. No?</p> <p>20 A. To my knowledge.</p> <p>21 Q. So, you heard Ms. Kekana when she</p> <p>22 testified about Respondent 4; you remember</p> <p>23 that?</p> <p>24 A. Yeah.</p> <p>25 Q. And you remember Respondent 4 and</p>	<p style="text-align: right;">184</p> <p>1 DAVIS, Ph.D.</p> <p>2 the word "instructed"; but certainly in the</p> <p>3 workplace having Ms. Barton and Ms. Phillips</p> <p>4 have a conversation to clear this up was a</p> <p>5 goal -- an effort at resolution and better</p> <p>6 understanding of what Ms. Phillips overheard.</p> <p>7 Q. Okay.</p> <p>8 And is it true that -- by the way,</p> <p>9 you understand that Respondent 3 is Marilyn</p> <p>10 Barton, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So, was it also true that you told</p> <p>14 Ms. Phillips that you would speak to Marilyn</p> <p>15 Barton too; is that right?</p> <p>16 A. That's true.</p> <p>17 Q. And did you speak to Marilyn Barton?</p> <p>18 A. I recall that I did.</p> <p>19 Q. And you spoke to her about this</p> <p>20 complaint, correct?</p> <p>21 A. I did not speak to her about this</p> <p>22 complaint as it's laid out here. I spoke to</p> <p>23 her about the fact that Marjorie had come to</p> <p>24 me with -- with her concerns about what she</p> <p>25 had overheard in the office, and I asked</p>



<p style="text-align: right;">185</p> <p>1 DAVIS, Ph.D.</p> <p>2 Marilyn to give me context for that fragment</p> <p>3 of the conversation that Ms. Phillips had</p> <p>4 heard.</p> <p>5 Q. But again, with regard to anything</p> <p>6 that Ms. Phillips complained to you about</p> <p>7 that she was offended by, you never brought</p> <p>8 that to the Affirmative Action Office, right?</p> <p>9 A. That's correct, per -- per the</p> <p>10 policy and its definitions.</p> <p>11 MR. SELLS: Okay. We can take</p> <p>12 down the document.</p> <p>13 Q. So when Ms. Phillips came to you</p> <p>14 with all four of her complaints regarding</p> <p>15 Ms. Barton, regarding Mr. Farmer and</p> <p>16 regarding Ms. Cowan, you didn't see any of</p> <p>17 those complaints rising to the level of</p> <p>18 discrimination, harassment or retaliation --</p> <p>19 MR. DRANOFF: Objection --</p> <p>20 Q. -- is that right?</p> <p>21 A. Those complaints were brought to me</p> <p>22 over a period of, I believe, four years; and</p> <p>23 the answer is yes, I did not take them to the</p> <p>24 Affirmative Action Office per the policy and</p> <p>25 it's definition.</p>	<p style="text-align: right;">187</p> <p>1 DAVIS, Ph.D.</p> <p>2 Respondent 4 will always side against people</p> <p>3 of color."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. All right.</p> <p>7 MR. SELLS: We can take it</p> <p>8 down.</p> <p>9 Q. So, let's see. Umilta Alsop,</p> <p>10 Ms. Phillips, Anton Baptiste; you never tried</p> <p>11 to get them a reclassification or a raise,</p> <p>12 right?</p> <p>13 A. Again, it is outside my power or it</p> <p>14 was outside of my power as a dean to get</p> <p>15 either of those things for them. I had the</p> <p>16 power to trigger the process by sending a</p> <p>17 recommendation to my supervisor.</p> <p>18 Q. Right.</p> <p>19 Never did that; but you were able to</p> <p>20 do it for Marilyn Barton, who's not a person</p> <p>21 of color, right?</p> <p>22 A. That's correct.</p> <p>23 Q. Got it.</p> <p>24 Ms. Phillips raises four allegations</p> <p>25 of discrimination to you and you side on the</p>
<p style="text-align: right;">186</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. And instead, Ms. Phillips brought</p> <p>3 them to the Affirmative Action Office</p> <p>4 herself, right?</p> <p>5 A. Yes.</p> <p>6 Q. And not only did she bring those</p> <p>7 complaints to the Affirmative Action Office,</p> <p>8 but she also complained about you always</p> <p>9 siding with Caucasians over</p> <p>10 African-Americans, right?</p> <p>11 MR. DRANOFF: Object to the</p> <p>12 form.</p> <p>13 A. I don't know what she spoke to the</p> <p>14 Affirmative Action Office about.</p> <p>15 Q. Well, we just saw in the last</p> <p>16 exhibit, Exhibit 29, where that was a</p> <p>17 statement that she made?</p> <p>18 A. Actually, we did not look at that</p> <p>19 statement --</p> <p>20 Q. Okay. Let's pull it backup.</p> <p>21 MR. SELL: Can we put up</p> <p>22 Exhibit 29 and go to Respondent 4.</p> <p>23 (The image is shared on the</p> <p>24 computer screen.)</p> <p>25 Q. It says, "Complainant alleges that</p>	<p style="text-align: right;">188</p> <p>1 DAVIS, Ph.D.</p> <p>2 favor of Ms. Cowan, Mr. Farmer and Ms. Barton</p> <p>3 who are all white, right?</p> <p>4 A. No.</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form.</p> <p>7 A. Not correct. I did not side with</p> <p>8 anyone. I listened to everyone involved in</p> <p>9 those four incidents, and I made the</p> <p>10 determination that in each case the offensive</p> <p>11 language or behavior, under F.I.T.'s policy,</p> <p>12 it did not merit or did not trigger</p> <p>13 requirement to report to Affirmative Action.</p> <p>14 Q. Ms. Barton, she's white, right?</p> <p>15 A. That's correct.</p> <p>16 Q. Mr. Farmer is white, right?</p> <p>17 A. That's correct.</p> <p>18 Q. Ms. Cowan is white?</p> <p>19 A. That's correct.</p> <p>20 Q. Once the Affirmative Action Office</p> <p>21 gets the complaint from Ms. Phillips, there's</p> <p>22 an investigation that occurs, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that investigation started in</p> <p>25 March of 2018, right?</p>

<p style="text-align: right;">189</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I can't say definitively.</p> <p>3 Q. Okay.</p> <p>4 Well, you want to pull up the</p> <p>5 exhibit again?</p> <p>6 A. I'm just saying, I was not part of</p> <p>7 the investigation.</p> <p>8 Q. All right. Whatever. We don't have</p> <p>9 to do that.</p> <p>10 Anyway, the point is that by May of</p> <p>11 2018 you knew that this investigation was</p> <p>12 taking place, correct?</p> <p>13 A. I knew the part of it that related</p> <p>14 to me. I knew the part to which I was made</p> <p>15 to respond.</p> <p>16 Q. Right.</p> <p>17 And that had to do with Marilyn</p> <p>18 Barton, right? With Marilyn Barton and the</p> <p>19 3/5th of the person, it had to do with</p> <p>20 Marilyn Barton and the comments about being</p> <p>21 illegitimate or a bastard, right?</p> <p>22 A. No. I was asked to respond only to</p> <p>23 the 3/5ths -- the issue of the 3/5ths</p> <p>24 provision.</p> <p>25 Q. All right.</p>	<p style="text-align: right;">191</p> <p>1 DAVIS, Ph.D.</p> <p>2 question again? I lost track.</p> <p>3 Q. Was it about the time that the memo</p> <p>4 that we have just read from, the one that was</p> <p>5 written in October of 2019, was that about</p> <p>6 the time that you learned that the</p> <p>7 investigation had concluded?</p> <p>8 A. I am not sure when I received a copy</p> <p>9 of that memo.</p> <p>10 Q. All right.</p> <p>11 MR. DRANOFF: Can we take just</p> <p>12 five minutes?</p> <p>13 MR. SELLS: Yes, of course.</p> <p>14 MR. MENKEN: I need to take a</p> <p>15 call from 4:00 to 4:10.</p> <p>16 MR. SELLS: That's fine. So</p> <p>17 you want to come back, you want to</p> <p>18 say 3:40. Then we'll go for another</p> <p>19 20 minutes.</p> <p>20 MR. DRANOFF: I'm going to be</p> <p>21 less than five minutes.</p> <p>22 MR. SELLS: We'll come back at</p> <p>23 3:35.</p> <p>24 MR. MENKEN: Thank you.</p> <p>25 MR. SELLS: All right.</p>
<p style="text-align: right;">190</p> <p>1 DAVIS, Ph.D.</p> <p>2 Well, the point is you knew that a</p> <p>3 complaint had been made by Ms. Phillips</p> <p>4 against you, right?</p> <p>5 A. I knew that I was being asked to be</p> <p>6 a Respondent in that complaint, yes.</p> <p>7 Q. And that was in May of 2018,</p> <p>8 correct?</p> <p>9 A. I believe it was the end of May</p> <p>10 2018.</p> <p>11 Q. And you knew that Ms. Barton had</p> <p>12 been implicated in that complaint by</p> <p>13 Ms. Phillips too, correct?</p> <p>14 A. Well, Marilyn was the one who made</p> <p>15 the comment about the 3/5ths rule, so yes.</p> <p>16 Q. Okay.</p> <p>17 When did you ever learn that that</p> <p>18 investigation was completed?</p> <p>19 A. It was a very long time before I</p> <p>20 knew that that investigation was completed.</p> <p>21 I can't say specifically.</p> <p>22 Q. All right.</p> <p>23 Was it about the time that that</p> <p>24 closeout memo was written in October of 2019?</p> <p>25 A. I'm sorry? Could you repeat your</p>	<p style="text-align: right;">192</p> <p>1 DAVIS, Ph.D.</p> <p>2 (Whereupon, a brief recess was</p> <p>3 taken at 3:29 p.m.; after which, the</p> <p>4 proceeding continued at 3:35 p.m. as</p> <p>5 follows.)</p> <p>6 MR. SELLS: Back on the record.</p> <p>7 Q. Now, Ms. Davis, when you indicated</p> <p>8 that none of Ms. Phillips' complaints rose to</p> <p>9 the level that you felt you needed to see in</p> <p>10 order to report it to the Affirmative Action</p> <p>11 Office, was that based on some training that</p> <p>12 you had received?</p> <p>13 A. That was -- that was based on my</p> <p>14 reading of the policy and it's provisions.</p> <p>15 Q. Okay.</p> <p>16 Did you ask anybody whether or not</p> <p>17 you're reading was correct?</p> <p>18 A. I don't recall specifically doing</p> <p>19 that.</p> <p>20 Q. All right.</p> <p>21 So, you had this mental image as you</p> <p>22 were reading the policy that, you know, I</p> <p>23 just don't see it. I don't see, you know, a</p> <p>24 comment about "the hood," or the comment</p> <p>25 about "the back of the bus," or a comment</p>

<p style="text-align: right;">193</p> <p>1 DAVIS, Ph.D.</p> <p>2 about "3/5ths of a person" rising to the</p> <p>3 level of discrimination or harassment or</p> <p>4 retaliation that was necessary to report it?</p> <p>5 A. The policy has substantial and</p> <p>6 substantive definitional sections that</p> <p>7 provide guidance in making those judgments;</p> <p>8 and as I have explained, the comments that</p> <p>9 you have just repeated back were fragments --</p> <p>10 overheard fragments in most cases of</p> <p>11 conversations that had more context around</p> <p>12 them.</p> <p>13 Q. How did you learn that the fragments</p> <p>14 had more context around them? How did you</p> <p>15 know that?</p> <p>16 A. Because they were simply fragments</p> <p>17 of conversations. Both Ms. Phillips and</p> <p>18 other -- the other people involved in those</p> <p>19 incidents reported them to me as Marjorie</p> <p>20 coming in and overhearing things, parts of</p> <p>21 conversations. Marjorie herself reported</p> <p>22 that to me, that she overheard parts of the</p> <p>23 conversations; so that's how.</p> <p>24 Q. So everybody that Ms. Phillips</p> <p>25 complained about, you spoke to and got their</p>	<p style="text-align: right;">195</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. No --</p> <p>3 Q. You didn't investigate it?</p> <p>4 A. I did not.</p> <p>5 Q. Okay.</p> <p>6 You just spoke to the people that</p> <p>7 raised the complaints and you spoke to the</p> <p>8 people who the complaints were made about --</p> <p>9 A. I did not.</p> <p>10 Q. -- is that right?</p> <p>11 A. I spoke to people who were -- in the</p> <p>12 case of the employee incidents relating to</p> <p>13 Marjorie's formal complaint, I spoke to the</p> <p>14 people who were involved in those incidents</p> <p>15 in realtime around those incidents to</p> <p>16 understand what had happened. That was not</p> <p>17 an investigation, those were conversations.</p> <p>18 And in the case of the students, I</p> <p>19 met with the students at their request, as we</p> <p>20 have already discussed.</p> <p>21 Q. Now by doing so, you didn't allow</p> <p>22 the Affirmative Action Office to get the</p> <p>23 first opportunity to speak to the people who</p> <p>24 were involved in the complaints, right?</p> <p>25 A. My understanding is that the person</p>
<p style="text-align: right;">194</p> <p>1 DAVIS, Ph.D.</p> <p>2 side of the story as well; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Got it.</p> <p>5 Just like you did with the students</p> <p>6 who complained about the fashion show --</p> <p>7 A. The students --</p> <p>8 Q. -- you met with them and you met</p> <p>9 with Mr. Farmer, but you didn't report it to</p> <p>10 the affirmative action coordinator, correct?</p> <p>11 A. The students did not complain about</p> <p>12 the fashion show. The students raised</p> <p>13 concerns about the program, the culture in</p> <p>14 the program, the accessories, possible --</p> <p>15 possible issues that were arising around the</p> <p>16 accessories, as we have described already</p> <p>17 today.</p> <p>18 Q. Right.</p> <p>19 But in all of those situations you</p> <p>20 did not see it as rising to the level of</p> <p>21 discrimination, harassment or retaliation?</p> <p>22 A. That's correct.</p> <p>23 Q. And so you investigated it yourself --</p> <p>24 A. That's --</p> <p>25 Q. -- just to make sure, correct?</p>	<p style="text-align: right;">196</p> <p>1 DAVIS, Ph.D.</p> <p>2 who has a complaint also has the right to go</p> <p>3 directly to the Affirmative Action Office,</p> <p>4 and I believe that is in the policy that we</p> <p>5 just looked at recently -- I mean, within the</p> <p>6 last hour.</p> <p>7 Q. What's that got to do with anything?</p> <p>8 A. I'm just -- that has do with your</p> <p>9 comment about --</p> <p>10 Q. It's a question --</p> <p>11 A. Oh, sorry. Your question about --</p> <p>12 actually, it was more of a comment about the</p> <p>13 Affirmative Action Office not having the</p> <p>14 first opportunity to interview people.</p> <p>15 Q. Right.</p> <p>16 So anybody that has brought a</p> <p>17 complaint that touches upon race or race</p> <p>18 insensitivity, you spoke to them first and</p> <p>19 the people they complained about you spoke to</p> <p>20 them first before the Affirmative Action</p> <p>21 Office did; is that correct?</p> <p>22 A. In these cases the -- the complaint</p> <p>23 from Ms. Phillips --</p> <p>24 Q. It is just a simple question. I</p> <p>25 mean, we don't need a speech. Either yes, I</p>

<p style="text-align: right;">197</p> <p>1 DAVIS, Ph.D.</p> <p>2 did speak to them first or no, the</p> <p>3 Affirmative Action people spoke to them</p> <p>4 first. Just give me a straight answer on</p> <p>5 that.</p> <p>6 A. I spoke to them first.</p> <p>7 Q. Got it.</p> <p>8 And did you memorialize your</p> <p>9 conversations with any of the people that you</p> <p>10 spoke to, other than the students, in that</p> <p>11 February 18th, 2020 memo that you wrote?</p> <p>12 A. I don't believe so.</p> <p>13 Q. So, let's talk about the May 16th,</p> <p>14 2019 incident. Do you remember that?</p> <p>15 A. I do.</p> <p>16 Q. All right.</p> <p>17 Now, this happened right outside</p> <p>18 your office; is that correct?</p> <p>19 A. I was not in the office; so I cannot</p> <p>20 tell you exactly where it happened.</p> <p>21 Q. Well, where did it -- as far as you</p> <p>22 know, where did it happen?</p> <p>23 A. As far as I know, it happened in the</p> <p>24 outer suite of the dean's office; which is</p> <p>25 where Ms. Phillips, Mrs. Alsop and Ms. Barton</p>	<p style="text-align: right;">199</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. But that text message, I would have</p> <p>3 received that text message long before the</p> <p>4 filing for this case.</p> <p>5 Q. Okay.</p> <p>6 Well, I just asked if you had ever</p> <p>7 been instructed not to destroy any evidence</p> <p>8 related to the claims in this case --</p> <p>9 A. I --</p> <p>10 Q. -- and so --</p> <p>11 A. Yes --</p> <p>12 Q. -- my question is, Do you recall</p> <p>13 when you received that instruction?</p> <p>14 A. I would have received that</p> <p>15 instruction when I received notification of</p> <p>16 the filing of the case.</p> <p>17 Q. All right.</p> <p>18 And so you are saying you destroyed</p> <p>19 the text or erased the text before you were</p> <p>20 told not to destroy any information; is that</p> <p>21 correct?</p> <p>22 A. No, I'm not saying either one of</p> <p>23 those things.</p> <p>24 First of all, I don't know if I</p> <p>25 still have the text on my personal device;</p>
<p style="text-align: right;">198</p> <p>1 DAVIS, Ph.D.</p> <p>2 were located.</p> <p>3 Q. Got it.</p> <p>4 Now, how did you learn about this</p> <p>5 May 16th, 2019 incident?</p> <p>6 A. I was in a meeting and got a text</p> <p>7 message calling me back to the office.</p> <p>8 Q. Who texted you?</p> <p>9 A. I believe it was Anton who texted</p> <p>10 me; but I'm not certain of that.</p> <p>11 Q. Do you still have that text?</p> <p>12 A. I probably do not.</p> <p>13 Q. Well this text that you received,</p> <p>14 was it on your personal device or did you</p> <p>15 have --</p> <p>16 A. It was on my personal device.</p> <p>17 Q. All right.</p> <p>18 Were you ever instructed not to</p> <p>19 destroy, erase or get rid of documents related</p> <p>20 to this case?</p> <p>21 A. The lawsuit that we are discussing</p> <p>22 today?</p> <p>23 Q. Yeah.</p> <p>24 A. Yes.</p> <p>25 Q. Mm-hmm --</p>	<p style="text-align: right;">200</p> <p>1 DAVIS, Ph.D.</p> <p>2 and secondly, I believe that I would have</p> <p>3 received the text before I received</p> <p>4 notification of this case.</p> <p>5 Q. Got it.</p> <p>6 So was it often that you had text</p> <p>7 messages with Anton Baptiste?</p> <p>8 A. No.</p> <p>9 Q. And so, do you have your personal</p> <p>10 device handy now?</p> <p>11 A. I don't; it's upstairs.</p> <p>12 Q. Okay.</p> <p>13 So at the next break, would you be</p> <p>14 so kind as to look through your device and</p> <p>15 see if there is a text?</p> <p>16 A. If I'm advised to do so by my</p> <p>17 counsel.</p> <p>18 MR. DRANOFF: Take it under</p> <p>19 advisement. Next break.</p> <p>20 MR. SELLS: All right.</p> <p>21 Q. Now, what do you recall the text</p> <p>22 saying?</p> <p>23 A. "Come back to the office as soon as</p> <p>24 you can. There is an --" I think it said</p> <p>25 something, you know -- "there's an incident."</p>

<p style="text-align: right;">201</p> <p>1 DAVIS, Ph.D.</p> <p>2 I don't believe that it was specific.</p> <p>3 Q. All right.</p> <p>4 And when do you recall seeing that</p> <p>5 text?</p> <p>6 A. It would have been in -- I believe</p> <p>7 it was probably in the late morning. I don't</p> <p>8 recall exactly.</p> <p>9 Q. Do you recall where you were when</p> <p>10 you saw the text?</p> <p>11 A. I think I was in a dean's meeting up</p> <p>12 on the 9th floor of the -- of the F.I.T.</p> <p>13 building.</p> <p>14 Q. And did you respond to the text?</p> <p>15 A. I believe -- again, I don't recall;</p> <p>16 but I believe I said, "I'm on my way."</p> <p>17 Q. Okay.</p> <p>18 Did you show up at your office</p> <p>19 following that text?</p> <p>20 A. I did.</p> <p>21 Q. When was that?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Was it on May 16 --</p> <p>24 A. Oh, yeah --</p> <p>25 Q. -- 2019 --</p>	<p style="text-align: right;">203</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, why would you ask them as</p> <p>3 opposed to anything else?</p> <p>4 A. Because they were Tom people in the</p> <p>5 office.</p> <p>6 Q. Did Marilyn Barton text you?</p> <p>7 A. I don't believe so.</p> <p>8 Q. So, you didn't receive any message,</p> <p>9 e-mail, text, phone call from Marilyn Barton</p> <p>10 following this incident?</p> <p>11 A. Again, I don't remember.</p> <p>12 Q. Okay. All right.</p> <p>13 So you come in and you just announce</p> <p>14 out loud "what happened?" to both Umlita and</p> <p>15 Marjorie Phillips?</p> <p>16 A. No. I asked both of them, and I</p> <p>17 think -- I'm trying to remember if they</p> <p>18 started talking first or if I started talking</p> <p>19 first. I actually don't remember. But I</p> <p>20 remember that I -- I felt that I needed to</p> <p>21 learn what had happened.</p> <p>22 Q. And why did you feel that way?</p> <p>23 A. Because something clearly had</p> <p>24 happened that had upset Marjorie. Umlita, as</p> <p>25 I recall again, was comforting Marjorie at</p>
<p style="text-align: right;">202</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. Yes, it was on that day. I'm not</p> <p>3 sure of the hour.</p> <p>4 Q. Okay.</p> <p>5 When you got there, what do you</p> <p>6 recall seeing as you entered the outer space</p> <p>7 to your office?</p> <p>8 A. I recall -- again, to my</p> <p>9 recollection, I recall seeing Marjorie at her</p> <p>10 desk. I recall you Umlita being there. I</p> <p>11 recall that Marilyn was not in that part of</p> <p>12 the office, and I don't recall anyone else</p> <p>13 being there.</p> <p>14 Q. Okay.</p> <p>15 So upon entering the office what did</p> <p>16 you do?</p> <p>17 A. I asked what had happened?</p> <p>18 Q. To who?</p> <p>19 A. To both Umlita and Marjorie who were</p> <p>20 there.</p> <p>21 Q. So, why did you ask them?</p> <p>22 A. Because they were there.</p> <p>23 Q. But did you have any idea what the</p> <p>24 incident was about?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">204</p> <p>1 DAVIS, Ph.D.</p> <p>2 that point. Marilyn was not in her usual</p> <p>3 work place.</p> <p>4 Q. Isn't it a fact you and Marilyn</p> <p>5 Barton walked into your office together?</p> <p>6 A. I don't remember.</p> <p>7 Q. And then you met privately with</p> <p>8 Marilyn before you spoke to Ms. Phillips and</p> <p>9 anyone else; isn't that right?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you remember speaking with</p> <p>12 Ms. Barton in your office following this</p> <p>13 incident?</p> <p>14 A. I do.</p> <p>15 Q. Tell me what the conversation was</p> <p>16 about?</p> <p>17 A. The conversation was about finding</p> <p>18 out what had happened.</p> <p>19 Q. Okay.</p> <p>20 What did you say and what did she</p> <p>21 say?</p> <p>22 A. I'm not gonna be able to recall</p> <p>23 word-for-word a conversation that happened</p> <p>24 that long ago. The import of the</p> <p>25 conversation was that there had been an</p>

<p style="text-align: right;">205</p> <p>1                   DAVIS, Ph.D.</p> <p>2 incident with the student who had come</p> <p>3 looking -- who had been unable for whatever</p> <p>4 reason to get a cap and gown regalia for the</p> <p>5 graduation which was coming up and there had</p> <p>6 been -- the student had come looking for it</p> <p>7 and she had been sent back to the book store,</p> <p>8 which is where caps and gowns are given out.</p> <p>9                   Because the student had not ordered</p> <p>10 one in advance, as I recall, she was sent</p> <p>11 back to the School of Graduate Studies. We</p> <p>12 kept a supply of caps and gowns in the school</p> <p>13 because this happened every year. Some</p> <p>14 student would forget and so we had extras on</p> <p>15 hand. I was told that Marilyn made the</p> <p>16 decision to give the student regalia and that</p> <p>17 there was a back and forth between</p> <p>18 Ms. Phillips and Ms. Barton about this, and</p> <p>19 as we heard yesterday that this escalated</p> <p>20 rapidly.</p> <p>21                   But as to what Marilyn Barton told</p> <p>22 me, those are the -- the -- those are -- she</p> <p>23 related those facts to me.</p> <p>24                   Q. Okay.</p> <p>25                   Well you said it "escalated</p>	<p style="text-align: right;">207</p> <p>1                   DAVIS, Ph.D.</p> <p>2 this regalia and giving it off to the</p> <p>3 student, Ms. Phillips was objecting to that</p> <p>4 and apparently there was some back and forth</p> <p>5 between them over that and Ms. Barton lost</p> <p>6 it.</p> <p>7                   Q. And so, Marilyn Barton told you that</p> <p>8 she -- did she say that she was yelling?</p> <p>9                   A. I believe she did.</p> <p>10                   Q. And she told you that she told</p> <p>11 Ms. Phillips that she would "fucking kill</p> <p>12 her"; is that right?</p> <p>13                   A. I believe she did.</p> <p>14                   Q. And did she say that she told</p> <p>15 Ms. Phillips that she would fuck her up?</p> <p>16                   A. I'm not sure how many of the -- how</p> <p>17 much of the language that we now know she</p> <p>18 related to me in that moment after the</p> <p>19 incident.</p> <p>20                   Q. All right.</p> <p>21                   But you don't recall what it is that</p> <p>22 she said specifically about why she snapped;</p> <p>23 is that right?</p> <p>24                   A. I think she just said I -- it's been --</p> <p>25 this is been building for a long time. I</p>
<p style="text-align: right;">206</p> <p>1                   DAVIS, Ph.D.</p> <p>2 rapidly." Escalated by who?</p> <p>3                   A. By Marilyn.</p> <p>4                   Q. So, what did Marilyn Barton say to</p> <p>5 you about how she escalated this rapidly?</p> <p>6                   A. She was remorseful. She said that</p> <p>7 she had become very -- I don't remember,</p> <p>8 again, the exact words that she uses -- that</p> <p>9 she used. But that she had become angry and</p> <p>10 had yelled at Ms. Phillips. She told me, I</p> <p>11 believe, that she had used the words "I will</p> <p>12 fucking kill you." With -- she had addressed</p> <p>13 those words to Ms. Phillips.</p> <p>14                   And again, Marilyn was quite upset</p> <p>15 about all of this and just sort of -- yeah,</p> <p>16 the -- the other part of this that she told</p> <p>17 me was that she just snapped and that she --</p> <p>18 she didn't know why, but she just snapped.</p> <p>19                   Q. You said "she didn't know why"?</p> <p>20                   A. She -- again, I don't recall exactly</p> <p>21 what she said to me; but the import of it was</p> <p>22 that she had become so frustrated with</p> <p>23 Ms. Phillips over time that she just snapped</p> <p>24 over this; because she felt like she was</p> <p>25 making -- Marilyn was making a decision about</p>	<p style="text-align: right;">208</p> <p>1                   DAVIS, Ph.D.</p> <p>2 don't recall specifically, no.</p> <p>3                   Q. So, what did you say to Ms. Barton</p> <p>4 after she told that to you?</p> <p>5                   A. I recall telling her to go compose</p> <p>6 herself. I also spoke with Ms. Phillips --</p> <p>7                   Q. Well, no. No. No. No. No. No, I</p> <p>8 want you to tell me everything you said to</p> <p>9 Ms. Barton.</p> <p>10                   A. All right. I'm trying to recall</p> <p>11 everything that I said to her. I might have</p> <p>12 told her -- I recall telling her to compose</p> <p>13 herself. I'm not sure I recall any other</p> <p>14 specific things that I said to her.</p> <p>15                   Q. So, you didn't ask her any</p> <p>16 questions?</p> <p>17                   A. I don't recall whether what I</p> <p>18 learned was as a result of asking questions</p> <p>19 or she just told me.</p> <p>20                   Q. So, how was it that you and</p> <p>21 Ms. Barton met to go into your office?</p> <p>22                   A. As I said, I didn't recall that we</p> <p>23 went into my office together; so I don't</p> <p>24 recall how we would have met to do that.</p> <p>25                   Q. All right.</p>

<p style="text-align: right;">209</p> <p>1 DAVIS, Ph.D.</p> <p>2 And so, now when you hear that</p> <p>3 Ms. Barton had -- in her own words -- snapped</p> <p>4 and threatened to kill Ms. Phillips, what did</p> <p>5 you do next?</p> <p>6 A. I'm not sure that I will remember</p> <p>7 the sequence of events exactly as they</p> <p>8 happened. I definitely spoke with Marjorie</p> <p>9 to make sure that she was okay. I remember</p> <p>10 that she was very composed and very calm, and</p> <p>11 I remarked that and said something like,</p> <p>12 "Given what I have just heard, I'm surprised</p> <p>13 that you are this calm." And she was upset</p> <p>14 but very, very composed.</p> <p>15 I asked her what she wanted to do, I</p> <p>16 would think. I called security, I believe.</p> <p>17 Q. When you asked Ms. Phillips what she</p> <p>18 wanted to do, why did you do that?</p> <p>19 A. Because I was concerned for her</p> <p>20 well-being.</p> <p>21 Q. But at this point in time, you knew</p> <p>22 that there was an open investigation about</p> <p>23 whether you had discriminated against</p> <p>24 Ms. Phillips, right?</p> <p>25 A. Oh, it never -- those two things</p>	<p style="text-align: right;">211</p> <p>1 DAVIS, Ph.D.</p> <p>2 10-minute break now, Derek?</p> <p>3 MR. SELLS: Yes. Yes, sorry.</p> <p>4 MR. MENKEN: I'll be back 4:10.</p> <p>5 MR. SELLS: Why don't you just</p> <p>6 tell us when you are ready to come</p> <p>7 back on?</p> <p>8 MR. MENKEN: I'll do that.</p> <p>9 Thank you.</p> <p>10 (Whereupon, a brief recess was</p> <p>11 taken at 4:00 p.m.; after which, the</p> <p>12 proceedings continued at 4:10 p.m. as</p> <p>13 follows.)</p> <p>14 MR. DRANOFF: Derek, just so</p> <p>15 you know, during the break we did</p> <p>16 have Ms. Davis check her phone and</p> <p>17 there was no text message.</p> <p>18 MR. SELLS: Got it.</p> <p>19 Q. Do you have text messages with</p> <p>20 Marilyn Barton?</p> <p>21 A. I do.</p> <p>22 Q. All right.</p> <p>23 And have you shown these text</p> <p>24 messages to anyone?</p> <p>25 A. I have not.</p>
<p style="text-align: right;">210</p> <p>1 DAVIS, Ph.D.</p> <p>2 never collided in my thinking when this was</p> <p>3 happening.</p> <p>4 This was very in the moment of</p> <p>5 taking care of a very charged situation that</p> <p>6 I wanted to make sure -- where I wanted to</p> <p>7 make sure that the employees were safe and</p> <p>8 that there was no further escalation of</p> <p>9 anything. I was --</p> <p>10 Q. So, do you have training in that?</p> <p>11 Do you have training on making employees feel</p> <p>12 safe after they get threats, after they get</p> <p>13 death threats? Do you have training in that?</p> <p>14 A. I am not speaking in an official</p> <p>15 capacity that would require training. I'm</p> <p>16 speaking in a human capacity of compassion</p> <p>17 and empathy.</p> <p>18 So, I was not the last person to be</p> <p>19 involved in this. I notified Human</p> <p>20 Resources --</p> <p>21 Q. How did you do that?</p> <p>22 A. I believe I called to Natacha Unelus</p> <p>23 the generalist; but again, I cannot be -- I</p> <p>24 cannot be certain about any of these details.</p> <p>25 MR. MENKEN: Can we take that</p>	<p style="text-align: right;">212</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, you have not shared these text</p> <p>3 messages with your attorney or anyone at</p> <p>4 F.I.T.; is that right?</p> <p>5 A. The text messages that I'm referring</p> <p>6 to are texts about meetings being</p> <p>7 rescheduled, logistics. I don't believe that</p> <p>8 there is anything substantive in those</p> <p>9 e-mails -- text messages. I have not</p> <p>10 reviewed them. I just took a brief look at</p> <p>11 them during the break.</p> <p>12 Q. So, do you have any text messages</p> <p>13 regarding the date May 16th, 2019 from</p> <p>14 Marilyn Barton?</p> <p>15 A. I did not see any when I reviewed my</p> <p>16 messages just now.</p> <p>17 Q. Did you look specifically for that?</p> <p>18 A. I did not.</p> <p>19 Q. So, this text message that you</p> <p>20 remember seeing, you don't know who it was</p> <p>21 from?</p> <p>22 A. I now wonder if I just misremembered</p> <p>23 the entire thing and did not receive a text</p> <p>24 message. I really believe it was Anton, but</p> <p>25 I do not recall.</p>



<p style="text-align: right;">213</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Got it.</p> <p>3 Anyway we were talking about your</p> <p>4 meeting with Ms. Phillips following this May</p> <p>5 16th, 2019 meeting and you asked her what did</p> <p>6 she want you; is that right? Or what did you</p> <p>7 to do you asked her, right?</p> <p>8 A. I don't recall what I asked her.</p> <p>9 Q. Okay.</p> <p>10 But your concern at that the point</p> <p>11 was for everyone's safety; is that right?</p> <p>12 A. I was concerned for everyone's</p> <p>13 safety. I was concerned for Ms. Phillips'</p> <p>14 having heard about what had happened.</p> <p>15 Q. You said that you called security;</p> <p>16 is that right?</p> <p>17 A. I recall that I called Human</p> <p>18 Resources, and I'm not sure if I called</p> <p>19 security directly or if they called security.</p> <p>20 Q. Why did you call Human Resources?</p> <p>21 A. To let them know -- I called --</p> <p>22 again, I'm remembering this and I don't</p> <p>23 believe that I have any notes or anything</p> <p>24 about it. But I believe that I called our</p> <p>25 generalist in Human Resources to say that we</p>	<p style="text-align: right;">215</p> <p>1 DAVIS, Ph.D.</p> <p>2 told to Ms. Phillips, right?</p> <p>3 A. She did.</p> <p>4 Q. So my question is, You certainly</p> <p>5 know Ms. Phillips is African-American,</p> <p>6 correct?</p> <p>7 A. I do.</p> <p>8 Q. And you just decided on your own</p> <p>9 that this incident was not an act of</p> <p>10 discrimination, right?</p> <p>11 A. In the moment of the incident, my</p> <p>12 concern was for everyone's safety and</p> <p>13 security.</p> <p>14 Q. That is not my question.</p> <p>15 A. I know.</p> <p>16 Q. So if your concern was just about</p> <p>17 everyone's safety and security, then why</p> <p>18 would you choose HR to make the call to as</p> <p>19 opposed to the Affirmative Action Office?</p> <p>20 A. Because, again, I did not perceive --</p> <p>21 based on the description given to me -- that</p> <p>22 what had happened was the result of discrim-</p> <p>23 -- discrimination -- just -- discriminatory</p> <p>24 harassment or retaliation.</p> <p>25 Q. Well, does the policy say</p>
<p style="text-align: right;">214</p> <p>1 DAVIS, Ph.D.</p> <p>2 had had a serious incident in the School of</p> <p>3 Graduate Study office?</p> <p>4 Q. Okay.</p> <p>5 And what was the point of calling</p> <p>6 the HR generalist?</p> <p>7 A. The Human Resources generalist was</p> <p>8 responsible for issues -- work place issues</p> <p>9 in our office and was my point person for</p> <p>10 those things.</p> <p>11 Q. Okay.</p> <p>12 Well, why didn't you call the</p> <p>13 Affirmative Action Office?</p> <p>14 A. I did not call the Affirmative</p> <p>15 Action Office because I did not believe this</p> <p>16 was an incident related to discrimination,</p> <p>17 discriminatory harassment or retaliation per</p> <p>18 the policy.</p> <p>19 Q. Had you ever seen Marilyn Barton</p> <p>20 threaten to kill a Caucasian person?</p> <p>21 A. I had never seen Marilyn Barton</p> <p>22 threaten to kill anyone. I did not see</p> <p>23 Marilyn Barton threaten to kill Ms. Phillips.</p> <p>24 Q. Okay.</p> <p>25 Well, she told you that's what she</p>	<p style="text-align: right;">216</p> <p>1 DAVIS, Ph.D.</p> <p>2 discriminatory harassment?</p> <p>3 A. I believe it does. I don't recall --</p> <p>4 Q. You believe it does? Okay.</p> <p>5 A. We can look at it again.</p> <p>6 Q. No, we can't.</p> <p>7 So you just assume that it wasn't</p> <p>8 discriminatory harassment as opposed to just</p> <p>9 harassment, right?</p> <p>10 A. I did not believe that what had</p> <p>11 happened, based on what was described to me</p> <p>12 about the incident, was related to</p> <p>13 discrimination or retaliation?</p> <p>14 Q. What's retaliation?</p> <p>15 A. Retaliation is defined in the</p> <p>16 policy. I'm not comfortable summarizing what</p> <p>17 the policy says about.</p> <p>18 Q. No, I just want to know what your</p> <p>19 understanding is about retaliation.</p> <p>20 A. I have multiple understandings of</p> <p>21 retaliation depending upon the context.</p> <p>22 Q. Okay.</p> <p>23 So tell me what they are?</p> <p>24 A. I would have to know what the</p> <p>25 context would be in order to give you a</p>

<p style="text-align: right;">217</p> <p>1 DAVIS, Ph.D.</p> <p>2 definition of retaliation.</p> <p>3 Q. Well, we're talking about the</p> <p>4 antiharassment policy at F.I.T., aren't we?</p> <p>5 A. If we are talking about the</p> <p>6 antiharassment policy I would not be</p> <p>7 comfortable at this point talking about it</p> <p>8 without seeing the language in the policy.</p> <p>9 Q. Why?</p> <p>10 A. Because I have not been at F.I.T.,</p> <p>11 as I have said, now since February of 2020.</p> <p>12 My memory of the details of that policy, it's</p> <p>13 not -- my memory is not comprehensive, and I</p> <p>14 would not feel comfortable summarizing or</p> <p>15 paraphrasing what is in the policy.</p> <p>16 Q. Okay.</p> <p>17 So, did you pull out the policy</p> <p>18 before you made the call to HR to see if the</p> <p>19 definition of retaliation fit with the</p> <p>20 description of what occurred on --</p> <p>21 A. As I have said --</p> <p>22 Q. -- on May 16th, 2019?</p> <p>23 A. As I said in the immediate moment of</p> <p>24 that incident, my concern was with</p> <p>25 understanding --</p>	<p style="text-align: right;">219</p> <p>1 DAVIS, Ph.D.</p> <p>2 February of 2020, and I do not recall the</p> <p>3 provisions of the policy.</p> <p>4 Q. Okay.</p> <p>5 So, you made a decision without</p> <p>6 looking at the policy that it wasn't</p> <p>7 something that you should report to the</p> <p>8 Affirmative Action Office, correct?</p> <p>9 A. In the moment, correct.</p> <p>10 Q. But you also knew that the</p> <p>11 Affirmative Action Office was investigating</p> <p>12 you on May 16th, 2019, correct?</p> <p>13 A. I am not sure when I -- I -- as I</p> <p>14 said, I believe I gave my statement late in</p> <p>15 May. I am not sure when I knew that the</p> <p>16 Affirmative Action Office was investigating</p> <p>17 me. And I'm not sure that I knew that they</p> <p>18 weren't investigating me on matters that</p> <p>19 extended beyond the 3/5th's rule issue.</p> <p>20 Q. Okay.</p> <p>21 Well, your answer before was that</p> <p>22 you were interviewed about the incidents in</p> <p>23 May of 2018. This is a year later, right?</p> <p>24 This is May of 2019, right?</p> <p>25 A. Yes. Again, I --</p>
<p style="text-align: right;">218</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. Listen. Look -- Dean -- look --</p> <p>3 A. Excuse me.</p> <p>4 Q. Dr. Davis, I simply asked you, Did</p> <p>5 you look at the policy before you called HR?</p> <p>6 That's all I asked you.</p> <p>7 A. No.</p> <p>8 Q. It's either yes or no. You said you</p> <p>9 didn't?</p> <p>10 A. No.</p> <p>11 Q. But in order to answer the question</p> <p>12 now about whether the conduct that was</p> <p>13 described to you by Marilyn Barton fit into</p> <p>14 the definition of retaliation, you would need</p> <p>15 to look at the policy?</p> <p>16 A. That's correct.</p> <p>17 Q. But you didn't do it then, but you</p> <p>18 need to do it now that you have been sued,</p> <p>19 right?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. The reason I would need to do it now</p> <p>25 is because I have not been at F.I.T. since</p>	<p style="text-align: right;">220</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So you knew that the Affirmative</p> <p>3 Action Office had an open investigation into</p> <p>4 your conduct as well as Marilyn Barton's</p> <p>5 conduct because of complaints that</p> <p>6 Ms. Phillips had raised to them, right?</p> <p>7 A. I knew that there was a complaint</p> <p>8 that related to me to which I was responding.</p> <p>9 Q. And so, you chose not to go to the</p> <p>10 Affirmative Action Office to report Marilyn</p> <p>11 Barton's conduct as potentially being</p> <p>12 retaliatory, right?</p> <p>13 A. I'm not sure what your question is.</p> <p>14 Q. Do you want it read again?</p> <p>15 A. No, I thought you were in the middle</p> <p>16 of a question there.</p> <p>17 Q. No. You chose not to report</p> <p>18 Ms. Barton's conduct to the Affirmative</p> <p>19 Action Office as possibly being retaliatory,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. But you know that retaliation is</p> <p>23 when an adverse action is taken against an</p> <p>24 employee who makes a complaint of</p> <p>25 discrimination, harassment or some other</p>

<p style="text-align: right;">221</p> <p>1 DAVIS, Ph.D.</p> <p>2 protected category, right?</p> <p>3 A. Yes, I'm aware of the policy.</p> <p>4 Q. Got it.</p> <p>5 And so, you knew that Ms. Barton's</p> <p>6 conduct towards Ms. Phillips and threatening</p> <p>7 to kill her and cursing at her and disturbing</p> <p>8 her ability to do her job was an adverse</p> <p>9 employment action; you knew that, right?</p> <p>10 A. I did -- I'm sorry. Could you</p> <p>11 repeat the question? I lost track in the</p> <p>12 middle.</p> <p>13 (Whereupon, the requested</p> <p>14 portion of the transcript was read</p> <p>15 back.)</p> <p>16 MR. MELITO: Objection to form.</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 A. I'm not sure in the moment that I</p> <p>20 would have characterized it in that way as an</p> <p>21 "adverse employment action."</p> <p>22 Q. You don't think that was an adverse</p> <p>23 employment action?</p> <p>24 A. I've said that in the moment -- in</p> <p>25 that moment of that event, I'm not sure I</p>	<p style="text-align: right;">223</p> <p>1 DAVIS, Ph.D.</p> <p>2 because she did something outside of her job</p> <p>3 description?</p> <p>4 A. I'm not sure I follow your question.</p> <p>5 Q. Sure.</p> <p>6 Marilyn Barton was subject to a</p> <p>7 complaint of discrimination by Ms. Phillips,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you were the subject of a</p> <p>11 complaint by Ms. Phillips, right?</p> <p>12 A. Correct.</p> <p>13 Q. And you were the one who put in a</p> <p>14 request and recommendation that Ms. Barton be</p> <p>15 given reclassification of her job and a</p> <p>16 raise, right?</p> <p>17 A. I put in that request in 2017. And</p> <p>18 again, it was not within my duties and</p> <p>19 responsibilities or power to request a raise.</p> <p>20 Q. Got it.</p> <p>21 But you could have withdrawn that</p> <p>22 request, right?</p> <p>23 A. No, that committee -- that request</p> <p>24 goes out of my hands when it goes into the</p> <p>25 committees that do the reassignment and the</p>
<p style="text-align: right;">222</p> <p>1 DAVIS, Ph.D.</p> <p>2 would have categorized it in that way.</p> <p>3 Q. Well, how would you characterize it?</p> <p>4 A. I characterized it as -- well, first</p> <p>5 of all, I characterized it as highly</p> <p>6 unfortunate; but also as a possible assault.</p> <p>7 Q. "As a possible assault"; is that</p> <p>8 what you said?</p> <p>9 A. Yes, base --</p> <p>10 Q. So --</p> <p>11 A. On --</p> <p>12 Q. -- so an assault is not an adverse</p> <p>13 employment action? When one employee has a</p> <p>14 complaint lodged against them by another</p> <p>15 employee assaults the employee who makes the</p> <p>16 complaint, but you can't characterize that as</p> <p>17 an adverse action; is that correct?</p> <p>18 A. No, that is not correct.</p> <p>19 Q. Okay.</p> <p>20 Well, certainly assaulting</p> <p>21 Ms. Phillips was not part of Marilyn Barton's</p> <p>22 job description, right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 So, did you try and reclassify her</p>	<p style="text-align: right;">224</p> <p>1 DAVIS, Ph.D.</p> <p>2 evaluation of the requests and.</p> <p>3 Q. Got it.</p> <p>4 You could have had Ms. Barton fired</p> <p>5 for her conduct, right?</p> <p>6 A. That is not true. I had no --</p> <p>7 Q. Oh --</p> <p>8 A. -- I have no power or had no power</p> <p>9 in my position.</p> <p>10 Q. So you can't make a recommendation</p> <p>11 that an employee who you supervise could be</p> <p>12 fired; you don't have the power to do that?</p> <p>13 A. Ms. Barton is a member of the</p> <p>14 collective bargaining unit and those matters</p> <p>15 are handled between that unit and Human</p> <p>16 Resources.</p> <p>17 Q. So let me understand, you as a</p> <p>18 supervisor have the ability to recommend and</p> <p>19 request a reconsideration through the union</p> <p>20 for one of your supervisees to get a raise</p> <p>21 and a reclassification; you could do that,</p> <p>22 right?</p> <p>23 A. No.</p> <p>24 Q. -- as you described --</p> <p>25 MR. DRANOFF: Just note my</p>

<p style="text-align: right;">225</p> <p>1 DAVIS, Ph.D.</p> <p>2 objection to form.</p> <p>3 A. No, I can request, as I did for</p> <p>4 Ms. Barton, a re-evaluation. But the</p> <p>5 decisions about --</p> <p>6 Q. I'm not asking about a decision.</p> <p>7 I'm asking about a request --</p> <p>8 A. I can make --</p> <p>9 Q. Just listen to my question.</p> <p>10 You could request that an employee</p> <p>11 of yours, someone that you supervised, get a</p> <p>12 reclassification and a raise; you could</p> <p>13 request that, right?</p> <p>14 A. No.</p> <p>15 MR. DRANOFF: Object to the</p> <p>16 form.</p> <p>17 Q. You can't request it? I thought you</p> <p>18 did?</p> <p>19 A. I can request a re-evaluation or a</p> <p>20 reclassification. I cannot request any</p> <p>21 adjustment to salary.</p> <p>22 Q. Well, that's what the</p> <p>23 reclassification does, right? Because if</p> <p>24 someone get's reclassified under the</p> <p>25 collective bargaining agreement, if they get</p>	<p style="text-align: right;">227</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. I'm not asking about that.</p> <p>3 A. I know, but I --</p> <p>4 Q. So, you just want to answer your own</p> <p>5 questions since you know that my question did</p> <p>6 not ask you when you submitted the paperwork.</p> <p>7 It asked you specifically when the raise and</p> <p>8 reclassification came through, you chose to</p> <p>9 answer by saying, "I submitted the paperwork</p> <p>10 in 2017."</p> <p>11 A. I --</p> <p>12 Q. I mean, look. Look.</p> <p>13 A. I was going to finish --</p> <p>14 Q. Dr. Davis. Dr. Davis, I'll raw the</p> <p>15 question.</p> <p>16 Dr. Davis, do you understand what</p> <p>17 you are doing today the way that you are</p> <p>18 answering these question; do you understand</p> <p>19 what you are doing?</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 There is no reason to ask that</p> <p>23 question. Ask about facts in this</p> <p>24 case.</p> <p>25 MR. SELLS: No, I'm just</p>
<p style="text-align: right;">226</p> <p>1 DAVIS, Ph.D.</p> <p>2 reclassified to a different position, then</p> <p>3 that different position would have different</p> <p>4 pay; isn't that right?</p> <p>5 MR. DRANOFF: Object to the</p> <p>6 form. Objection. That's inaccurate.</p> <p>7 A. It's inaccurate, and it --</p> <p>8 Q. Oh, it's not -- it's not accurate.</p> <p>9 Well, tell me how it's inaccurate?</p> <p>10 A. It is not accurate in that you could</p> <p>11 be reclassified into a position that had the</p> <p>12 same pay scale but that was in a different</p> <p>13 unit, that had a different job title; it</p> <p>14 doesn't necessarily invoke a pay raise. It</p> <p>15 can invoke --</p> <p>16 Q. What did it do with Ms. Barton?</p> <p>17 A. The committee ultimately</p> <p>18 reclassified her to a higher level, and I</p> <p>19 believe there was a pay increase that</p> <p>20 accompanied that reassignment.</p> <p>21 Q. Right.</p> <p>22 And this happened after Ms. Barton</p> <p>23 threatened to kill Ms. Phillips?</p> <p>24 A. The paperwork that I submitted was</p> <p>25 submitted in 2017.</p>	<p style="text-align: right;">228</p> <p>1 DAVIS, Ph.D.</p> <p>2 asking.</p> <p>3 Q. Whether you are doing it</p> <p>4 intentionally?</p> <p>5 MR. DRANOFF: That is not --</p> <p>6 Q. When I ask you a question</p> <p>7 specifically about when the raise and the</p> <p>8 reclassification came through as being after</p> <p>9 the incident with Ms. Phillips and Ms. Barton</p> <p>10 and you chose to say, "I put the paperwork in</p> <p>11 in 2017."</p> <p>12 So I am asking you, are you doing</p> <p>13 this purposefully so as to try and deflect</p> <p>14 liability for your conduct in this case or is</p> <p>15 there some reason why you are not answering</p> <p>16 the questions that are being asked of you?</p> <p>17 MR. DRANOFF: Object to the</p> <p>18 form.</p> <p>19 Ask your question, Derek, and</p> <p>20 she will answer your question.</p> <p>21 MR. SELLS: I just asked a</p> <p>22 question.</p> <p>23 MR. DRANOFF: That is not an</p> <p>24 appropriate question. It has nothing</p> <p>25 to do with the case.</p>

<p style="text-align: right;">229</p> <p>1 DAVIS, Ph.D.</p> <p>2 MR. SELLS: It has everything</p> <p>3 to do with the case.</p> <p>4 Q. It has everything to do with the way</p> <p>5 you're answering questions today, and that's</p> <p>6 why I'm trying to find out --</p> <p>7 MR. DRANOFF: Note a harassment</p> <p>8 objection.</p> <p>9 MR. SELLS: Okay.</p> <p>10 Q. You can answer the question.</p> <p>11 A. I will happily answer the question.</p> <p>12 I was halfway through answering the question</p> <p>13 when I was interrupted.</p> <p>14 So the second part of my answer is,</p> <p>15 I do not recall exactly when Marilyn Barton's</p> <p>16 upgrade came through.</p> <p>17 Q. Got it.</p> <p>18 But you didn't seek to change</p> <p>19 anything having to do with Marilyn Barton's</p> <p>20 job following her threats to kill</p> <p>21 Ms. Phillips, right?</p> <p>22 A. I did not.</p> <p>23 Q. Okay.</p> <p>24 You didn't ask that she be moved out</p> <p>25 of the office that was right outside of your</p>	<p style="text-align: right;">231</p> <p>1 DAVIS, Ph.D.</p> <p>2 May 16th, 2019 incident, right?</p> <p>3 A. I would not characterize what I did</p> <p>4 as an investigation.</p> <p>5 Q. Okay.</p> <p>6 Well, you collected statements, did</p> <p>7 you not?</p> <p>8 A. I didn't -- I was asked by Human</p> <p>9 Resources to obtain statements from people</p> <p>10 who had been a witness -- people who had</p> <p>11 witnessed the events.</p> <p>12 Q. You were asked by Human Resources;</p> <p>13 who asked you to do it?</p> <p>14 A. I believe that Natacha Unelus asked</p> <p>15 me to do it, and I simply asked the people</p> <p>16 who had been witnesses to the event to</p> <p>17 provide me with a witness statement and</p> <p>18 collected those statements and forwarded them</p> <p>19 onto Human Resources.</p> <p>20 MR. SELLS: Can we put up</p> <p>21 Exhibit 36, please.</p> <p>22 (The image is shared on the</p> <p>23 computer screen.)</p> <p>24 MR. SELLS: For the record,</p> <p>25 this was shown yesterday. It is a</p>
<p style="text-align: right;">230</p> <p>1 DAVIS, Ph.D.</p> <p>2 office, correct?</p> <p>3 A. I did not.</p> <p>4 Q. And even though you talked about</p> <p>5 trying to make sure everyone was safe, you</p> <p>6 took no steps to determine whether or not</p> <p>7 Marilyn Barton was homicidal, right?</p> <p>8 A. That was outside the scope of my job</p> <p>9 or my expertise.</p> <p>10 Q. And you did not report Marilyn</p> <p>11 Barton's conduct as being retaliatory to the</p> <p>12 Affirmative Action Office, correct?</p> <p>13 A. Correct.</p> <p>14 Q. But you willingly allowed</p> <p>15 Ms. Phillips to be moved out of that office</p> <p>16 space, right?</p> <p>17 A. Ms. Phillips requested a move.</p> <p>18 Q. And you willingly allowed it,</p> <p>19 correct?</p> <p>20 A. I worked with Human Resources to</p> <p>21 evaluate the best option for relocation --</p> <p>22 Q. Got it --</p> <p>23 A. Yes.</p> <p>24 Q. And the other thing that you did was</p> <p>25 you did the initial investigation into this</p>	<p style="text-align: right;">232</p> <p>1 DAVIS, Ph.D.</p> <p>2 document that copies an e-mail</p> <p>3 thread, so if we could start from --</p> <p>4 this is a two-page document, F.I.T.</p> <p>5 237 and 238.</p> <p>6 Q. The thread first starts with Isolina</p> <p>7 Perez who talks about needing to meet, not</p> <p>8 with you, but with Eric and Cynthia.</p> <p>9 Do you know who they are?</p> <p>10 A. I do.</p> <p>11 Q. Who are they?</p> <p>12 A. Eric Oden and Cynthia Glass.</p> <p>13 Q. Okay.</p> <p>14 Now, one of the things that she says</p> <p>15 in her e-mail to them is that she reached out</p> <p>16 to you and -- and this is on May 20th, 2019 --</p> <p>17 that she had reached out to you and you said</p> <p>18 that you need to find out the protocol before</p> <p>19 discussing the incident.</p> <p>20 MR. DRANOFF: Object to the</p> <p>21 form.</p> <p>22 Q. Now, do you remember having that</p> <p>23 conversation with Ms. Perez?</p> <p>24 A. I do not.</p> <p>25 Q. Do you have any reason to believe</p>

<p style="text-align: right;">233</p> <p>1 DAVIS, Ph.D.</p> <p>2 that she is lying about this statement?</p> <p>3 A. I do not.</p> <p>4 Q. Why would you tell Isolina Perez</p> <p>5 that you need to find out the protocol before</p> <p>6 you could discuss the incident?</p> <p>7 A. I don't know what I meant by</p> <p>8 "protocol" or what Isolina is referring to</p> <p>9 when she characterizes what I say as to</p> <p>10 "protocol." I don't know that -- what that</p> <p>11 precisely refers to.</p> <p>12 Q. All right.</p> <p>13 But as of May 20th of 2019, one of</p> <p>14 the things that Ms. Perez indicates as that</p> <p>15 Ms. Phillips didn't feel safe in the same</p> <p>16 office with Ms. Barton; is that right?</p> <p>17 A. I see it there, yes.</p> <p>18 Q. Okay.</p> <p>19 And so she, Isolina Perez, had to</p> <p>20 reach out to Mario Cabrera to ask for a</p> <p>21 security escort for Ms. Phillips; do you see</p> <p>22 that?</p> <p>23 A. I do.</p> <p>24 Q. So, you didn't reach out to security</p> <p>25 to get an escort for Ms. Phillips, did you?</p>	<p style="text-align: right;">235</p> <p>1 DAVIS, Ph.D.</p> <p>2 is limited to HR.</p> <p>3 Q. Then you see that Cynthia Glass</p> <p>4 writes, "Sorry. Forgot to CC you Mary."</p> <p>5 And so she sends this to you, right?</p> <p>6 A. I can't tell without scrolling up to</p> <p>7 see if that happened --</p> <p>8 Q. Well, we'll get to that. Right?</p> <p>9 But she wouldn't write, "Sorry. Forgot to CC</p> <p>10 you, Mary" unless she was sending it to you,</p> <p>11 correct? She's not gonna write that for</p> <p>12 herself, is she?</p> <p>13 A. I would assume so.</p> <p>14 Q. All right. So let's scroll up.</p> <p>15 And you now have the underlying</p> <p>16 thread, you can read it, and then you respond</p> <p>17 back to Cynthia and you put Natacha on the</p> <p>18 e-mail thread, right?</p> <p>19 A. That's correct.</p> <p>20 Q. You say, "Hi, Cynthia. Thanks very</p> <p>21 much. FYI, I left an voice mail with Isolina</p> <p>22 this afternoon around 1:00 p.m. letting her</p> <p>23 know that I was gathering information and</p> <p>24 would like to wait until that process was</p> <p>25 complete before meeting."</p>
<p style="text-align: right;">234</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't know that those two things</p> <p>3 are mutually exclusive; but I do not recall.</p> <p>4 Q. Okay.</p> <p>5 So let's scroll up a little bit</p> <p>6 more. Then there is an e-mail from Cynthia</p> <p>7 Glass. What Cynthia Glass writes to Isolina</p> <p>8 is, "Hello, Isolina. We are currently</p> <p>9 investigating the incident, and I expect to</p> <p>10 have a report from Campus Safety in the a.m.</p> <p>11 Until an assessment that there is no</p> <p>12 imminent danger or other safety concerns, she</p> <p>13 may elect to remain home until we discuss and</p> <p>14 determine what may be necessary to resolve</p> <p>15 this issue."</p> <p>16 All right. So you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And so what Cynthia Glass is saying</p> <p>19 is that we -- and you were not part of HR,</p> <p>20 right?</p> <p>21 A. No.</p> <p>22 Q. So the we that she is talking about</p> <p>23 does not include you, does it?</p> <p>24 A. I can't be sure of that. It doesn't</p> <p>25 say specifically that this is related -- this</p>	<p style="text-align: right;">236</p> <p>1 DAVIS, Ph.D.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Cynthia didn't ask you to gather</p> <p>5 information; you did that on your own, right?</p> <p>6 A. No, that is not true.</p> <p>7 Q. So, when did she ask you to</p> <p>8 investigate?</p> <p>9 A. First of all, no one asked me to</p> <p>10 investigate; but my recollection is that</p> <p>11 Natacha Unelus as the HR generalist assigned</p> <p>12 to the Graduate School asked me to gather</p> <p>13 statements from the people who witnessed the</p> <p>14 incident or were involved in the incident;</p> <p>15 and I was doing that.</p> <p>16 Q. Did --</p> <p>17 A. Nothing more than collecting</p> <p>18 statements from the people who had witnessed</p> <p>19 or been involved in the incident.</p> <p>20 MR. SELLS: Okay. Let's pull</p> <p>21 this down.</p> <p>22 Q. Where in the F.I.T. policies does it</p> <p>23 say that where an employee has an open</p> <p>24 complaint that's being investigated by</p> <p>25 another employee and then faces a situation</p>

<p style="text-align: right;">237</p> <p>1 DAVIS, Ph.D.</p> <p>2 where a possible retaliation matter happens</p> <p>3 that the employee who has an open</p> <p>4 investigation and complaint should lead the</p> <p>5 investigation into the next possible</p> <p>6 complaint? Where does it say that in</p> <p>7 F.I.T.'s policies?</p> <p>8 MR. DRANOFF: Object to the</p> <p>9 form.</p> <p>10 A. I don't know that that's covered</p> <p>11 anywhere in F.I.T.'s policy.</p> <p>12 Q. Got it.</p> <p>13 But you know what a "conflict of</p> <p>14 interest" is, don't you?</p> <p>15 A. I believe I do.</p> <p>16 Q. Okay.</p> <p>17 What is a "conflict of interest"?</p> <p>18 A. A conflict of -- I'm not going to</p> <p>19 define "conflict of interest" because, again,</p> <p>20 that could be a very situational definition.</p> <p>21 Q. Okay.</p> <p>22 You already said that you made a</p> <p>23 determination that the incident between</p> <p>24 Ms. Barton and Ms. Phillips was not</p> <p>25 retaliation such that you have to report it</p>	<p style="text-align: right;">239</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I don't recall.</p> <p>3 MR. SELLS: Could we pull up</p> <p>4 Exhibit 20.</p> <p>5 Q. Is this a statement you got from</p> <p>6 Marilyn Barton?</p> <p>7 A. I believe it is.</p> <p>8 MR. SELLS: Just for the</p> <p>9 record, this is Marilyn Barton's</p> <p>10 statement on May 16th, 2019 that's</p> <p>11 been previously marked.</p> <p>12 (The image is shared on the</p> <p>13 computer screen.)</p> <p>14 Q. Now, did you read Ms. Barton's</p> <p>15 statement before you submitted it anywhere?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you help her prepare this</p> <p>18 statement?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Well, how did you get it from her;</p> <p>21 what did you tell her?</p> <p>22 A. I don't recall what it -- what I</p> <p>23 instructed everyone who was involved to</p> <p>24 provide. I -- I don't recall.</p> <p>25 Q. Well, in this statement does</p>
<p style="text-align: right;">238</p> <p>1 DAVIS, Ph.D.</p> <p>2 to the Affirmative Action Office, right?</p> <p>3 A. I said that in the moment of the</p> <p>4 incident I did not consider what happened to</p> <p>5 be retaliation or discrimination within the</p> <p>6 provisions of the policy at F.I.T.</p> <p>7 Q. Right.</p> <p>8 But that's in your own self-interest</p> <p>9 because Affirmative Action was already</p> <p>10 investigating you and Marilyn Barton, right?</p> <p>11 A. I disagree with your</p> <p>12 characterization; but yes, there was an</p> <p>13 Affirmative Action investigation ongoing.</p> <p>14 Q. Got it.</p> <p>15 Now, you collected statements from</p> <p>16 who?</p> <p>17 A. I believe I collected statements</p> <p>18 from you Umilta. I believe from Marilyn and</p> <p>19 Marjorie, although I'm not 100% sure of that,</p> <p>20 from Anton Baptiste and from Henry Wallace;</p> <p>21 and I believe those were the only people who</p> <p>22 were party to the incident.</p> <p>23 Q. Okay.</p> <p>24 So, tell me how did you ask Marilyn</p> <p>25 Barton for her statement?</p>	<p style="text-align: right;">240</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton anywhere talk about how she</p> <p>3 threatened to kill Ms. Phillips?</p> <p>4 A. Not in the portion that I could see</p> <p>5 on --</p> <p>6 MR. SELLS: Okay, scroll up.</p> <p>7 (The document is scrolling.)</p> <p>8 A. Not that I could see in that part of</p> <p>9 the screen.</p> <p>10 MR. SELLS: Okay. Keep going.</p> <p>11 Q. And now, in response to your</p> <p>12 statement that you collected from Ms. Barton</p> <p>13 and sent to HR, Cynthia Glass writes you back</p> <p>14 and says, "Thanks. Contrary to our earlier</p> <p>15 conversation, it appears that she is in fact</p> <p>16 alleging bullying, hostile work environment</p> <p>17 and this could be construed as a complaint.</p> <p>18 Thought it could be dealt with</p> <p>19 informally; but seeing this, I will need to</p> <p>20 speak with Delive to see what she recommends</p> <p>21 as next steps. This does not change our</p> <p>22 course on the investigation of the behavior</p> <p>23 she allegedly exhibited. Thanks, Cynthia."</p> <p>24 Thanks, Cynthia; is that correct?</p> <p>25 A. Yes, I think you read it accurately.</p>



<p style="text-align: right;">241</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. So, let me get this straight. The</p> <p>3 statement that you collected from Ms. Barton</p> <p>4 was now being used by Cynthia Glass to try</p> <p>5 and bring charges against Ms. Phillips for</p> <p>6 bullying and a hostile work environment,</p> <p>7 right?</p> <p>8 A. I cannot tell from this</p> <p>9 communication whether this bullying</p> <p>10 allegation relates to Marilyn Barton or</p> <p>11 Marjorie Phillips.</p> <p>12 Q. If you look at the last full</p> <p>13 sentence it says, "This does not change our</p> <p>14 course of the investigation of the behavior</p> <p>15 she allegedly exhibited."</p> <p>16 And so that's in reference to</p> <p>17 Marilyn Barton, "the behavior she exhibited,"</p> <p>18 right?</p> <p>19 A. I can't be sure of that without</p> <p>20 knowing the context of this communication.</p> <p>21 Q. Oh, really. Okay.</p> <p>22 A. Yes.</p> <p>23 Q. So, you think that there's going to</p> <p>24 be an investigation into alleged bullying and</p> <p>25 a hostile work environment by Marilyn Barton?</p>	<p style="text-align: right;">243</p> <p>1 DAVIS, Ph.D.</p> <p>2 Ms. Barton engaged in bullying conduct?</p> <p>3 Tell me. Point it out.</p> <p>4 A. It does not use those words.</p> <p>5 Q. Got it.</p> <p>6 So let me read the third paragraph.</p> <p>7 "I suggested to Ms. Phillips she share her</p> <p>8 concerns with the dean and that I didn't want</p> <p>9 to discuss the matter with her. She</p> <p>10 continued her critical commentary and</p> <p>11 questioning of my actions in a strident tone.</p> <p>12 In response, I told her loudly and</p> <p>13 firmly to desist. She continued, and at some</p> <p>14 point got up and approached and reached</p> <p>15 toward me in an uncomfortably close manner</p> <p>16 which made me feel threatened. The incident</p> <p>17 ended when another person entered our office</p> <p>18 and I used the opportunity to remove myself</p> <p>19 from the stressful situation."</p> <p>20 Did I read that correctly?</p> <p>21 A. You did.</p> <p>22 Q. Now, that was not something -- when</p> <p>23 I asked you earlier, that was not something</p> <p>24 that Marilyn Barton told you in her office,</p> <p>25 was it?</p>
<p style="text-align: right;">242</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. I think that is entirely possible.</p> <p>3 Q. You think so? That's not the way --</p> <p>4 well, let's take a look at the statement.</p> <p>5 MR. SELLS: Can we scroll</p> <p>6 backup.</p> <p>7 A. Can we --</p> <p>8 Q. Let's take a look at the statement.</p> <p>9 Where in the statement -- and you are reading</p> <p>10 it now. Where in the statement is there any</p> <p>11 allegation that Ms. Barton bullied</p> <p>12 Ms. Phillips?</p> <p>13 A. Can you explain to me how these</p> <p>14 two-page documents are related? It's not</p> <p>15 clear to me that Cynthia Glass' e-mail refers</p> <p>16 to this report.</p> <p>17 Q. I'm sorry? These were produced by</p> <p>18 your lawyers --</p> <p>19 A. Yes --</p> <p>20 Q. -- and F.I.T.'s lawyers.</p> <p>21 A. My --</p> <p>22 Q. -- so, you know, you can ask them.</p> <p>23 But the point is, I asked you where in her</p> <p>24 statement, the statement that you collected</p> <p>25 from Ms. Barton, where does it say that</p>	<p style="text-align: right;">244</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. As I said when I answered your first</p> <p>3 question, I don't recall details or the</p> <p>4 complete content of the discussion that I had</p> <p>5 with Marilyn that day.</p> <p>6 Q. No, but what you believed had</p> <p>7 happened was that Marilyn Barton assaulted</p> <p>8 Ms. Phillips. That's the way you described</p> <p>9 it. The context was such that I believed</p> <p>10 this could be an assault. That Ms. Barton</p> <p>11 could have assaulted Ms. Phillips; isn't that</p> <p>12 right?</p> <p>13 A. I was concerned about that, yes.</p> <p>14 Q. But this paragraph, in this</p> <p>15 statement you collected from Ms. Barton, says</p> <p>16 it in the opposite way. Says that</p> <p>17 "Ms. Phillips continued her critical</p> <p>18 commentary and questioning my actions in a</p> <p>19 strident tone.</p> <p>20 In response, I told her loudly and</p> <p>21 firmly to desist. She continued and at some</p> <p>22 point got up and approached and reached</p> <p>23 toward me in an uncomfortably close manner</p> <p>24 which made me feel threatened."</p> <p>25 That's a lie, right?</p>

<p style="text-align: right;">245</p> <p>1 DAVIS, Ph.D.</p> <p>2 A. That's Ms. Barton's statement.</p> <p>3 Q. That you collected, right?</p> <p>4 A. I was simply collecting e-mails. I</p> <p>5 was not --</p> <p>6 Q. Yes, got it --</p> <p>7 A. -- reviewing them, reading them or</p> <p>8 contributing to them.</p> <p>9 Q. And you and Ms. Barton were both</p> <p>10 under investigation for discriminating</p> <p>11 against Ms. Phillips, right?</p> <p>12 A. Correct.</p> <p>13 MR. SELLS: Let's scroll up.</p> <p>14 Q. "Although I raised my voice in</p> <p>15 response to Ms. Phillips's unrelenting</p> <p>16 criticism of me and my decision, her approach --</p> <p>17 her approach toward me made me feel harassed</p> <p>18 and then menaced. I also feel that</p> <p>19 Ms. Phillips' critical comments were</p> <p>20 unwanted -- unwarranted and intrusive."</p> <p>21 So you and Ms. Barton concocted this</p> <p>22 story so that an investigation could be</p> <p>23 launched against Ms. Phillips for bullying</p> <p>24 conduct, right?</p> <p>25 A. That is not true.</p>	<p style="text-align: right;">247</p> <p>1 DAVIS, Ph.D.</p> <p>2 environment. What don't you get?</p> <p>3 A. Again, this is Cynthia Glass'</p> <p>4 statement --</p> <p>5 Q. No, it's not Ms. Glass' statement.</p> <p>6 It's Ms. Barton's statement that you</p> <p>7 collected in your role as the investigator in</p> <p>8 Ms. Phillips' complaint, right?</p> <p>9 A. No, incorrect.</p> <p>10 Once again, I was not an</p> <p>11 investigator. I was simply tasked with</p> <p>12 collecting statements.</p> <p>13 Q. Well, you know that's a lie because</p> <p>14 Ms. Barton told you something completely</p> <p>15 different in your office. You knew that</p> <p>16 statement was a lie when you delivered it to</p> <p>17 Cynthia Glass; you knew it, right?</p> <p>18 A. I did not review Marilyn Barton's</p> <p>19 statement, as I have said. I simply</p> <p>20 collected the statements and passed them on</p> <p>21 to Human Resources as it was requested of me.</p> <p>22 Q. So, what conversation is Cynthia</p> <p>23 Glass talking about? "Thanks --" "Contrary</p> <p>24 to our earlier conversation. It appears that</p> <p>25 she is in fact alleging bullying, hostile</p>
<p style="text-align: right;">246</p> <p>1 DAVIS, Ph.D.</p> <p>2 Q. "This incident and numerous previous</p> <p>3 incidents involving Ms. Phillips have created</p> <p>4 a bullying, unhealthy and unproductive work</p> <p>5 environment."</p> <p>6 That is in her statement, right?</p> <p>7 A. That is in Ms. Barton's statement.</p> <p>8 Q. Got it.</p> <p>9 About Ms. Phillips, right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, let's go to the e-mail.</p> <p>12 And sure enough after you deliver</p> <p>13 this lie, this false statement to Cynthia</p> <p>14 Glass, Cynthia Glass says, "It appears that</p> <p>15 she is in fact alleging bullying, hostile</p> <p>16 work environment and this could be construed</p> <p>17 as a complaint."</p> <p>18 Right, a complaint from Marilyn</p> <p>19 Barton against Ms. Phillips?</p> <p>20 A. What I cannot discern from this</p> <p>21 e-mail is what Cynthia is referring to.</p> <p>22 Q. What do you mean "what she is</p> <p>23 referring to"? She is referring to the</p> <p>24 comment that Ms. Barton feels like she is</p> <p>25 part of a bullied and hostile work</p>	<p style="text-align: right;">248</p> <p>1 DAVIS, Ph.D.</p> <p>2 work environment and this could be construed</p> <p>3 as a complaint."</p> <p>4 A. I don't recall.</p> <p>5 Q. You don't recall?</p> <p>6 A. I don't.</p> <p>7 Q. So you and Cynthia Glass were</p> <p>8 working together to try and undermine</p> <p>9 Ms. Phillips's complaint?</p> <p>10 A. No, that is not correct.</p> <p>11 Q. And you tried to defuse the</p> <p>12 situation where Marilyn Barton threatened to</p> <p>13 kill Ms. Phillips, told her that she "was</p> <p>14 gonna fuck her up," told her to "shut the</p> <p>15 fuck up" --</p> <p>16 MR. DRANOFF: All right, Derek</p> <p>17 you don't need to -- I can't hear you --</p> <p>18 Q. You --</p> <p>19 MR. DRANOFF: I can't hear you</p> <p>20 when you raise your voice to that</p> <p>21 level.</p> <p>22 MR. SELLS: Okay. Okay.</p> <p>23 Q. You tried to turn this against</p> <p>24 Ms. Phillips, didn't you?</p> <p>25 A. No, I did not.</p>